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LONDON
LOCAL GOVERNMENT.

THE LAW RELATING TO THE

LONDON COUNTY COUNCIL, THE VESTRIES AND DISTRICT BOARDS ELECTED UNDER THE METROPOLIS MANAGEMENT ACTS, AND OTHER LOCAL AUTHORITIES.

BY

JOHN HUNT,

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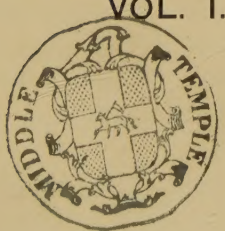
IN TWO VOLUMES.

VOL. I.



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PREFACE.

THE important development of London Local Government during the past few years, commencing in 1888 with the establishment of the County Council, has created a want for some book dealing at the same time with the powers and duties of that body and of the Vestries and District Boards, with their relations to one another, and with the law of London public health and building. The present work is an endeavour to supply this want, and to provide a comprehensive treatment of the subject which shall be of practical utility, not only to the legal profession, but also to the members and officers of those authorities.

The work is divided into two volumes, the general scheme being to include in the first volume the law relating to the constitution and election of the County Council, the Vestries and District Boards, and their powers and duties in relation to public health and building; and to set out in the second volume a collection of the principal auxiliary Acts under which various powers are conferred and duties imposed on them. There are also other local bodies in London performing important functions. These are dealt with in the notes, and included in the index, with sufficient fulness to indicate generally their constitution and powers and the Acts under which they exercise their jurisdiction. The subject under treatment is complicated by the numerous provisions inserted from time to time in the private Acts of the late Metropolitan Board of Works and the County Council. These, so far as they are in force and are of general or permanent effect, are set out in appropriate places.

In pursuance of the scheme indicated, the first volume contains the Local Government Act, 1888, with the incorporated sections of the Municipal Corporations Act, 1882, under which the County Council is constituted; the Metropolis Management Acts, under which the Vestries and District Boards are constituted, and under which both they and the County Council have extensive powers and duties; the Public Health (London) Act, 1891, as amended by the

Public Health (London) Act, 1891, Amendment Act, 1893, and the Public Health Act, 1896, immediately followed by the orders issued and in force under those Acts; and the London Building Act, 1894. The Metropolitan Paving Act, 1817, commonly called Michael Angelo Taylor's Act, and some short miscellaneous enactments are then set out; and finally the Local Government Act, 1894, which effected so radical a change in the qualification of the electors and members of the vestries; the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, which, with modifications, applies equally to the election of county councillors, vestrymen, and auditors; and the Vestrymen and Auditors (London) Election Order, 1897.

In the second volume the Acts are grouped together under the titles of the subjects to which they relate, arranged in alphabetical order, a list of the Acts being given at the commencement of each subject. This arrangement is of obvious advantage over the usual method of setting out the Acts in chronological order. No pains have been spared to treat each subject fully and completely, and, in view of their present and growing importance, especial attention has been devoted to the subjects of gas and water.

Beyond the orders under the Public Health Acts and the Vestrymen and Auditors (London) Election Order, above referred to, the size of the work will not permit of the inclusion of the text of the numerous orders and regulations issued under the various Acts set out, but every endeavour has been made to give, in notes to the sections under which they are issued, the reference to all orders and regulations, and also to all the byelaws of the County Council, existing and in force.

The index is set out at the end of the first volume, as it will be in connexion with that volume that it will be most frequently required; and the alphabetical arrangement of the second volume will, to a great extent, dispense with the necessity for using the index when referring to it. The addenda bring the cases down to the 1st July, 1897.

JOHN HUNT.

5, PUMP COURT, TEMPLE,
July, 1897.

CORRIGENDA AND SUPPLEMENTAL ADDENDA.

VOL. I.

Page 3, note (*s*).—**Police Courts.** The Metropolitan Police Courts Act, 1897 (60 & 61 Vict. c. 26), sec. 1, transfers to the metropolitan police fund the expenses and receipts of metropolitan police courts; and by sec. 3 (1) also transfers the property in such police courts from the Commissioners of Works to the Receiver for the Metropolitan Police District. Sec. 3 (2) enacts that "Any building, structure or work for the time being vested in the receiver shall be exempt from so much of the London Building Act, 1894, as relates to buildings and structures." See sec. 202 of the latter Act, *post*, p. 477.

Page 30, note (*u*).—**Commissioners of Sewers of the City of London.** By the City of London Sewers Act, 1897 (60 & 61 Vict. ch. cxxxiii.) these Commissioners are dissolved, and all their property, debt, duties, and liabilities are transferred to the mayor, commonalty, and citizens of the City of London, acting through the Common Council, on and from Plough Monday, 1898, *i.e.* January 10th, 1898. Section 7 provides that every Act of Parliament giving any power or imposing any duty or liability on the Commissioners shall be read as if in such Act the Common Council were substituted for the Commissioners.

Page 81, note (*h*).—On the last line but one of the third paragraph of this note *for* "Met. Man. Act, 1854, sec. 54, *ante*," *read* "Met. Man. Act, 1855, sect. 54, *post*."

Page 193, note (*m*).—**Attorney-General** *v.* **Camberwell Vestry.** The decision in this case is overridden by section 2 of the Metropolis Water Act, 1897, *post*, Vol. II., p. 1342*a*.

Page 329, note (*b*).—**Place for holding Inquests.** For the first two lines and the third line down to the word "that" of this note, substitute:—"The London County Council (General Powers) Act, 1897 (60 & 61 Vict. ch. cclii.) sec. 50, enacts that."

Page 357, note (*s*).—**Cholera Regulations.** The Order of the Local Government Board, dated August 5, 1893, prescribing cholera regulations (bedding and clothing, etc.), is rescinded by Order of the Local Government Board dated December 21, 1896 (*Lond. Gaz.* December 22, 1896, p. 7551), which does not substitute other provisions.

Page 434, note (*u*).—On line 5 from the bottom, *for* "two months' notice" *read* "one month's or two months' notice." At the end of line 3 from the bottom add the words "unless he has served such notice." On the last line, for "*ante*" read "*post*."

Page 439, line 5 from bottom.—*For* "29 Ch. D." *read* "19 Ch. D."

Page 505, last line.—*For* "St. Mary, Islington," *read* "St. Mary, Battersea."

Page 533.—**Election of Guardians.** The Local Govt. (Elections) Act, 1896, (59 Vict. c. 1), empowers county councils by order to do anything which may appear to them necessary for removing difficulties arising with respect to any election of parish or district councillors or of guardians or from an election not being held or being defective or otherwise. The County Council may for that purpose modify the provisions of the Local Govt. Act, 1894, and the enactments applied by or rules framed under that Act, and may delegate their powers to a committee. The Act expires on December 31st, 1897, but is continued to the 31st December, 1898, by the Expiring Laws Continuance Act, 1897, (60 & 61 Vict. c. 54).

October, 1897.

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ADDENDA.

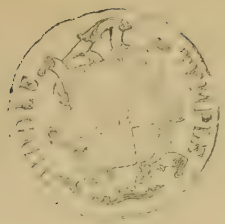
Page 58. **Approval of acts of Committee of Vestry or District Board.** Where a committee, on non-compliance with a notice to abate a nuisance under section 85 of the Metropolis Management Act, 1855, obtained a summons against the owner, but the approval by the vestry of the proceedings of the committee was not given until after the issue of the summons, it was held that the subsequent approval of the vestry was sufficient. *Firth* v. *Staines* (1897), 2 Q. B. 70; 66 L. J. Q. B. 510.

Page 264. **New street.** A private road upon which no new buildings had been erected since 1855 was held not to be a new street, to the expenses of paving which the adjoining owners were liable to contribute. The definition of the word "street" in section 250 of the Metropolis Management Act, 1855, cannot be incorporated with the definition of "new street" in section 112 of the Metropolis Management Amendment Act, 1862, for the purpose of determining whether a particular road is or is not a new street. *Arter* v. *Hammersmith Vestry* (1897), 1 Q. B. 646; 66 L. J. Q. B. 460.

Page 279. **Nuisance from public sewer.** The provisions of section 2 (1) (b) of the Public Health (London) Act, 1891, do not apply to public sewers, and therefore the justices have no jurisdiction to make a summary order on the County Council under section 5 of that Act in respect of an alleged nuisance arising from a main sewer. *Fulham Vestry* v. *London County Council* (1897), 2 Q. B. 76; 66 L. J. Q. B. 515.

Page 397. **Consent of County Council to building within prescribed distance of centre of roadway.** Where a building has been erected within the prescribed distance of the centre of the roadway without the previous consent of the County Council the courts will not grant a *mandamus* to the Council to hear an application for their consent to its retention under section 13 (4) of the London Building Act, 1894. Whether the Council has power or not to entertain an application after erection, the court will not compel them to act under such circumstances. *Reg.* v. *London County Council, Ex parte Webster*, 66 L. J. Q. B. 516; 76 L. T. (N. S.) 472.

Page 877. **Adulteration of spirits.** In selling spirits diluted with water only the seller is not liable to a penalty under section 6 of the Sale of Food and Drugs Act, 1875, if he brings to the knowledge of the purchaser at the time of sale the fact that the spirits are diluted so as to be reduced to more than the degrees under proof specified in section 9 of the Sale of Food and Drugs Amendment Act, 1879, because if that fact be brought to the knowledge of the purchaser the sale cannot be said to be to his prejudice. And it is not necessary that the seller should give notice of the admixture of the water with the spirits by a label, in accordance with section 8 of the Sale of Food and Drugs Act, 1875. *Palmer* v. *Tyler*, 61 J. P. 389.



LONDON

LOCAL GOVERNMENT.

LOCAL GOVERNMENT (ENGLAND AND WALES) ACT, 1888.

51 & 52 Vict. c. 41. An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith. [13th August, **1888**

Part I.—County Councils.

Constitution of County Council.

Establishment of county council.

1. A council shall be established in every administrative county (*a*) as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

Composition and election of council and position of chairman.

2.—(1) The council of a county and the members thereof shall be constituted and elected, and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough (*b*) divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say:—

(2) As respects the aldermen or councillors—

(a) clerks in holy orders and other ministers of religion (*c*) shall not be disqualified for being elected and being aldermen or councillors;

(b) a person shall be qualified to be an alderman or councillor who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county; 45 & 46 Vict. c. 50.

(*a*) **Administrative county** is defined by sec. 100, *post*.

(*b*) **Council of a borough**, i.e., a municipal borough. Sec. 100, *post*. As to the constitution of the council of a borough, and the qualifications and disqualifications of councillors and aldermen, see Municipal Corporations Act, 1882, secs. 10—16 and 39, *post*; and as to the election of councillors and aldermen, see *ib.* secs. 50—60, *post*. A woman is incapable of being elected a county councillor, and any votes given for her are thrown away. *Beresford Hope* v. *Sandhurst* (*Lady*), 23 Q. B. D. 79; 58 L. J. Q. B. 316. A woman is therefore disqualified for being a county alderman. Municipal Corporations Act, 1882, sec. 14 (3), *post*.

(*c*) **Ministers of religion.** Clergymen and dissenting ministers are disqualified for being councillors or aldermen of a municipal borough. Municipal Corporations Act, 1882, secs. 12 (b) and 14 (3), *post*.

51 & 52 Vict. c. 41.

(c) the aldermen shall be called county aldermen, and the councillors shall be called county councillors; and a county alderman shall not, as such, vote in the election of a county alderman (*d*).

(d) the county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election (*e*); and

(e) the divisions of the county for the purpose of the election of county councillors, shall be called electoral divisions and not wards, *and one county councillor only shall be elected for each electoral division* (*f*):

(3) [*Number of county councillors and boundaries of county electoral divisions. Inapplicable to London, which is specially provided for by sec.* 40 (4), *post.*]

(4) As respects the electors of the county councillors—

the persons entitled to vote at their election shall be, *in a borough* (*g*) . . . and elsewhere the persons registered as county electors under the County Electors Act, 1888 (*h*):

51 & 52 Vict. c. 10.

(5) As respects the chairman of the county council (*i*)—

(a) he shall be called chairman instead of mayor; and

(b) he shall, by virtue of his office, be a justice of the peace for the county; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace (*k*) other than the oath respecting the qualification by estate.

(6) The county council may from time to time appoint a member of the council to be vice-chairman (*l*), to hold office during the term of office of the chairman, and, subject to any rules made from time to time by the

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(*d*) **Election of county alderman.** An alderman may be elected a councillor, but ceases to be an alderman as soon as he makes his declaration as councillor. *Reg.* v. *Mayor, &c., of Bangor*, 18 Q. B. D. 349. Until he has made his declaration as councillor he would, under this section, apparently be disqualified to vote in the election of aldermen, but his disqualification would cease on his making such declaration.

(*e*) **Date of election of councillors.** The ordinary day of election of county councillors is such day between the 1st and 8th of March as the council may fix, and, if no date is fixed, is the 8th March every third year. Coun. Counc. (Electns.) Act, 1891, sec. 1 (1), *post*, p. 121, counting from the year 1892, *ib.* sec. 4.

(*f*) **One county councillor for each electoral division.** This limit does not apply to London. Sec. 40 (4), *post*, prescribes the number of county councillors for each electoral division in London.

(*g*) **Borough,** i.e., municipal borough. Sec. 100, *post*. The words in italics and those omitted do not, therefore, apply to London.

(*h*) **County Electors Act, 1888.** *Post*, vol. ii. tit. "*County Electors.*"

(*i*) **Chairman.** For the qualification of the chairman of the county council, his term of office, and salary, see Municipal Corporations Act, 1882, sec. 15, *post*, p. 82, and for the method and time of his election see *ib.* sec. 61, *post*, and the County Councils (Elections) Act, 1891, sec. 1 (3), *post*, p. 121. His powers and duties are prescribed and regulated by the London Coun. Counc. (Genl. Powers) Act, 1893, sec. 10 and sched., *post*, p. 114; and by the Standing Orders of the County Council.

(*k*) **Oaths required by law.** These are the oath of allegiance and the judicial oath prescribed by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72). Every person for the time being permitted by law to make an affirmation instead of taking an oath, may do so in the form prescribed by sec. 11 of that Act. Every person upon objecting to be sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his belief, is permitted to make his solemn affirmation instead of taking an oath. Oaths Act, 1888 (51 & 52 Vict. c. 46), sec. 1. The oaths of allegiance and judicial oath are taken before such persons as the Crown may from time to time appoint; or before the Lord Chancellor, or in the Court of Chancery, or Queen's Bench, or in open court at the general or quarter sessions for the county in which the person taking the oaths acts as justice. Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), sec. 2.

(*l*) **Vice-chairman.** The London County Council may, in addition, appoint and pay a deputy chairman. Sec. 88 (a) (b), *post*.

county council, anything authorised or required to be done by, to, or before the chairman may be done by, to, or before such vice-chairman. 51 & 52 Vict. c. 41.

Powers of County Council.

Transfer to county council of administrative business of quarter sessions.

3. There shall be transferred to the council of each county on and after the appointed day the administrative business of the justices of the county in quarter sessions assembled, that is to say, all business done by the quarter sessions (*m*) or any committee appointed by the quarter sessions, in respect of the several matters following, namely—

(i) The making, assessing, and levying of county (*n*), *police* (*o*), hundred, and all rates, and the application and expenditure thereof, and the making of orders for the payment of sums payable out of any such rate or out of the county stock or county fund, and the preparation and revision of the basis or standard for the county rate (*p*);

(ii) *The borrowing of money* (*q*);

(iii) The passing of the accounts of and the discharge of the county treasurer (*r*);

(iv) Shire halls, county halls, assize courts, judges' lodgings, lock-up houses, court houses (*s*), justices' rooms, police stations (*t*), and county buildings (*u*), works, and property, subject as to the use of

(*m*) **Quarter sessions.** This expression is defined by sec. 100, *post*.

(*n*) **County rate.** The making, assessing, and levying of the county rate is regulated by the County Rates Act, 1852, *post*, vol. ii. This rate supersedes the consolidated rate raised by the late Metropolitan Board of Works under the Metropolitan Board of Works (Loans) Act, 1869, sec. 22, *post*, vol. ii. tit. "*Loans*." See secs. 40 (9) and 63 (4) of the present Act, *post*.

(*o*) **Police rate.** Nothing in this Act authorises any county council to levy a police rate within the metropolitan police district. Sec. 93 (2), *post*.

(*p*) **Basis or standard of county rate.** The valuation list made by the overseers under the Valuation (Metropolis) Act, 1869, is the basis or standard for the county rate in the Metropolis. *Ib.* sec. 45, *post*, vol. ii. tit. "*Rating*." That Act extends to the whole of the administrative county of London, with the exception of the hamlet of Penge. *Ib.* sec. 3, and note thereto. In the hamlet of Penge the basis or standard for the county rate is prepared and revised by the London County Council under the County Rates Act, 1852, *post*, vol. ii. tit. "*Rating*."

(*q*) **Borrowing money.** The London County Council must borrow in accordance with the provisions of the Acts relating to the late Metropolitan Board of Works, sec. 40 (9), *post*.

(*r*) **County treasurer.** As to the duties of the county treasurer, and his appointment, removal, discharge, and remuneration, see the County Rates Acts, 1738, 1815, and 1852 (12 Geo. 2, c. 29, secs. 6—10; 55 Geo. 3, c. 51, sec. 17; and 15 & 16 Vict. c. 81, sec. 26). The London County Council has, however, appointed its treasurer under the Municipal Corporations Act, 1882, sec. 18, *post*, p. 82. See the Council's Standing Orders. The provisions of that section, therefore, supersede the existing enactments with respect to the county treasurer. Sec. 75 (16) (e), *post*.

(*s*) **Court houses.** The duty of providing court houses, offices, and buildings for carrying on the business of the police courts within the metropolitan police district is imposed on the Commissioner of Works by the Metropolitan Police Court (Buildings) Act, 1871 (34 & 35 Vict. c. 35), sec. 4. In the City the police courts are provided by the Corporation of the City. This duty is not transferred to the county council. Sec. 93, *post*.

(*t*) **Police stations.** Power to provide such police stations, offices, houses, and buildings as are required for the purposes of the Metropolitan Police Force is conferred on the Receiver for the Metropolitan Police District by the Metropolitan Police Act, 1886 (49 & 50 Vict. c. 22), sec. 2. By sec. 3 of that Act, and secs. 2 and 4 of the Metropolitan Police Act, 1887 (50 & 51 Vict. c. 45), the Receiver is empowered to borrow, and the Metropolitan Board of Works was authorised to lend any sum not exceeding £500,000 for the purpose. The authority to lend this money is now transferred to the County Council (sec. 40 (8) and (9), *post*), but the power to provide police stations, &c., is not (sec. 93, *post*). In the City the police stations and offices are provided by the Corporation.

(*u*) **County buildings.** The property in such county buildings as existed at the date of the commencement of this Act was transferred to the County Council by sec. 64 (1),

51 & 52 Vict. c. 41.

buildings by the quarter sessions and the justices to the provisions of this Act respecting the joint committee of quarter sessions and the county council (*x*);

(v) The licensing under any general Act of houses and other places for music or for dancing (*y*), and the granting of licences under the Racecourses Licensing Act, 1879 (*z*);

42 & 43 Vict. c. 18.

(vi) The provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics (*a*);

(vii) The establishment and maintenance of and the contribution to reformatory and industrial schools (*b*);

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post; and power to acquire or erect such halls, buildings, &c., as they may require is conferred by sec. 65, *post*. For the powers of the justices with respect to such buildings, see the County Buildings Acts, 1826, 1837, and 1847 (7 Geo. 4, c. 63; 7 Will. 4 & 1 Vict. c. 24; 10 & 11 Vict. c. 28); and the Judges Lodging Act, 1839 (2 & 3 Vict. c. 69).

(*x*) **Joint committee.** As to the constitution of this committee, and the accommodation for quarter sessions and the justices, see secs. 30 and 64 (3), *post*.

(*y*) **Music and dancing licences.** See the Disorderly Houses Act, 1751, and the Public Entertainment Act, 1875, *post*, vol. ii. tit. "*Theatres*," &c. The County Council exercise their powers under those Acts over the whole of the Metropolis, including the City. Secs. 41 (1) (b) and 48 (2), *post*. They may delegate those powers to a committee of their own body, or to the justices in petty sessions. Sec. 28 (2), *post*. They may also, by their Standing Orders, make regulations as to applications for licences (sec. 78 (3), *post*); but they have no power to administer an oath. Sec. 78 (2) (*b*), *post*.

The County Council, in determining applications for music and dancing licences, are acting judicially, and are bound by the same principles as are binding on justices in determining questions which come before them. Certain county councillors instructed counsel to oppose an application to the County Council for a licence and were themselves present at the hearing but did not vote, and the licence was refused. It was held that the presence of those county councillors who had instructed counsel to oppose the application vitiated the proceedings, and a rule for a mandamus to hear and determine the application according to law was made absolute. *Reg.* v. *London County Council, Ex parte Akkersdyk, Ex parte Fermenia* (1892), 1 Q. B. 190; 61 L. J. M. C. 75. Where, however, a county councillor attended a meeting of some persons who were opposed to the renewal of a licence, but took no part in the discussion, other than telling the meeting the course to be taken to oppose the licence, but afterwards voted against the renewal of the licence, a rule for a mandamus to compel the County Council to rehear the application was discharged, as sufficient bias had not been shown to disqualify the councillor from acting on the Council. *Reg.* v. *London County Council, Re the Empire Theatre*, 71 L. T. 638; 15 Rep. 66.

But though acting judicially, a meeting of the County Council for the purpose of granting music and dancing licences is not a court within the meaning of the rule by which defamatory statements made in the course of proceedings before a court are *absolutely* privileged. A county councillor making a defamatory statement at such a meeting with regard to a person applying for a licence is *not* entitled to *absolute* immunity from an action in respect of such statement. He is only entitled to the ordinary privilege which applies to a communication made without express malice on a privileged occasion. *Royal Aquarium* v. *Parkinson* (1892), 1 Q. B. 431; 61 L. J. Q. B. 409.

(*z*) **Racecourses Licensing Act, 1879.** Set out *post*, vol. ii.

(*a*) **Asylums for pauper lunatics.** See the Lunacy Acts, 1890 and 1891, *post*, vol. ii., which consolidate and repeal all former enactments on this subject. The Common Council is the local authority in the City for the purposes of those Acts, and the County Council in the remainder of the Metropolis. *Ib.* sec. 240. The City is not liable to contribute to expenses incurred by the County Council in respect of pauper lunatics (see sec. 41 (3) of the present Act, *post*, and note thereto); which are therefore chargeable to the special county rate. Sec. 68 (3), *post*.

(*b*) **Reformatory and industrial schools.** See the Acts relating to reformatory and industrial schools, *post*, vol. ii. In the City the powers transferred by this sub-section are exercised by the Common Council. Sec. 41 (1) (a), *post*. In the remainder of London they are exercised by the County Council. The City does not contribute to the expenses of the County Council in respect of reformatory and industrial schools (sec. 41 (3), *post*), which are therefore charged to the special county fund. Sec. 68 (3), *post*.

The London County Council has two industrial schools, viz., Mayford Industrial School, established and maintained under the Industrial Schools Act, 1866, *post*, vol. ii., and the Feltham Industrial School, established and maintained under the

(viii) Bridges (*c*) and roads repairable with bridges (*d*), and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority (*e*); 51 & 52 Vict. c. 41.

(ix) The tables of fees to be taken by and the costs to be allowed to any inspector (*f*), analyst (*g*), or person holding any office in the 41 & 42 Vict. c. 77.

Middlesex Industrial School Acts, 1854 and 1875 (17 & 18 Vict. ch. clxix.; and 38 & 39 Vict. ch. lxxxvii.).

Reformatory and industrial schools are rateable. *Durham County Council* v. *Chester-le-Street Overseers* (1891), 1 Q. B. 330; 60 L. J. M. C. 9.

(*c*) **Bridges.** The enactments relating to county bridges are the Statute of Bridges, 1530 (22 Hen. 8, c. 5), and the Bridges Acts, 1740—1815 (14 Geo. 2, c. 33; 43 Geo. 3, c. 59; 52 Geo. 3, c. 110; and 55 Geo. 3, c. 143).

In addition to the county bridges here transferred, the County Council under sec. 40 (8), *post*, took over from the Metropolitan Board of Works the following bridges, viz.:—Hammersmith, Putney, Wandsworth, Albert, Chelsea, Vauxhall, Lambeth, and Waterloo bridges over the Thames, and Deptford Creek bridge, which vested in and were maintainable by the Board, free from toll, under the Metropolis Toll Bridges Act, 1877 (40 & 41 Vict. ch. xcix.), and Westminster bridge, with its approaches, which was transferred from the Commissioners of Works to the Board by the London Parks and Works Act, 1887 (50 & 51 Vict. c. 34). These bridges are now declared to be county bridges by the London Coun. Counc. (Genl. Powers) Act, 1895 (58 & 59 Vict. ch. cxxvii.), sec. 46. Tower, London, Southwark, and Blackfriars bridges are vested in the City Corporation, and are maintained out of the Corporation's Bridge House Estates, under the Blackfriars Bridge Act, 1863 (26 & 27 Vict. ch. lxii), the Blackfriars and Southwark Bridges Act, 1867 (30 & 31 Vict. ch. iii.), and the Corporation of London (Tower Bridge) Act, 1885 (48 & 49 Vict. ch. cxcv.). Under the Metropolis Toll Bridges Act, 1877, the public have also a perpetual right of free use of the footbridge over the Thames at Charing Cross, which belongs to and is maintainable by the South-Eastern Railway Co.

Sec. 13, *post*, empowers the County Council to purchase existing bridges, not being county bridges, and to erect new ones. The County Council is also empowered to make byelaws with respect to bridges by the Metropolitan Board of Works (Various Powers) Act, 1882, sec. 41, and the London County Council (General Powers) Act, 1892, sec. 40, *post*, p. 523.

For further information respecting the law relating to county bridges, see "*Pratt's Law of Highways.*"

The Thames Tunnel (Blackwall) Act, 1887 (50 & 51 Vict. ch. clxxii.), empowered the Metropolitan Board of Works (now the London County Council, see sec. 40 (8) *post*) to make a tunnel or subway under the Thames between Blackwall and Greenwich, to be maintained, repaired, and lighted by the Board, and to make byelaws regulating traffic through it.

(*d*) **Roads repairable with bridges.** Except where a main road, repairable by the county council under sec. 11, *post*, passes over a county bridge, or where such bridge was built previous to 1835, the road over a county bridge and its approaches is repairable by the highway authority, and not by the county. Highway Act, 1835 (5 & 6 Will. 4, c. 50), sec. 21. *Reg.* v. *Southampton County*, 17 Q. B. D. 424; 55 L. J. M. C. 158.

(*e*) **Highways and Locomotives Amendment Act, 1878.** See this Act, *post*, vol. ii. The justices exercised no jurisdiction in the Metropolis under the Act, and therefore no business was transferred from them to the London County Council by the present section. But their powers and duties under the Act in respect to main roads in the Metropolis passed to the County Council under sec. 41 (4), *post*.

(*f*) **Inspector.** The inspectors here referred to are the inspectors of gas meters and the inspectors of weights and measures. The inspectors of gas meters were appointed under the Sale of Gas Act, 1859, *post*, vol. ii. tit. "*Gas*," throughout the Metropolis, including the City, by the Metropolitan Board of Works, whose powers were transferred to the County Council by sec. 40 (8), *post*.

The inspectors of weights and measures are appointed under the Weights and Measures Act, 1878, sec. 50, *post*, vol. ii. In the City they were appointed by the Court of the Lord Mayor and Aldermen, whose powers under that Act are transferred to the Common Council by sec. 41 (1), *post*, and in the remainder of the Metropolis by the justices, whose powers are transferred to the County Council by the present section. In the City of Westminster the Court of Burgesses is empowered by 24 & 25 Vict. c. 78, to appoint inspectors of weights and measures, but the County Council alone within the whole of the county of London, exclusive of the City, have the powers and discharge the duties of inspectors of weights and measures appointed under the Weights and Measures Acts, 1878 and 1889, *post*, vol. ii. See sec. 16 of the latter Act. The fees to be taken by inspectors of weights and measures are prescribed by sec. 13 of the latter Act.

(*g*) **Analyst.** The public analysts are appointed and remunerated in the City by

51 & 52 Vict. c. 41.

county other than the clerk of the peace (*h*) and the clerks of the justices (*i*);

(x) The appointment, removal, and determination of salaries, of the county treasurer (*k*), the county surveyor (*l*), the public analysts (*m*), any officer under the Explosives Act, 1875 (*n*), and any officers whose remuneration is paid out of the county rate other than the clerk of the peace (*h*), and the clerks of the justices (*i*);

38 & 39 Vict. c. 17.

(xi) The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and the assignment of such districts (*o*);

(xii) The division of the county (*p*) into polling districts for the purposes of parliamentary elections (*q*), the appointment of places

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the Commissioners of Sewers, and in the remainder of the Metropolis by the vestries and district boards, under the Sale of Food and Drugs Act, 1875, sec. 10, *post*, vol. ii. tit. "*Food and Drugs*."

(*h*) **Clerk of the peace.** See secs. 30 (3) and 84, *post*, as to the fees, appointment, removal, and remuneration of the clerk of the peace.

(*i*) **Clerks of the justices.** See secs. 30 (3) and 84, as to the fees, appointment, removal, and remuneration of the clerks of the justices.

(*k*) **County treasurer.** See note to sec. 3 (iii), *supra*.

(*l*) **County surveyor.** The justices were empowered by the Statute of Bridges, 1530 (22 Hen. 8, c. 5), secs. 4 and 8, to appoint and pay the county surveyor. His chief powers and duties are regulated and prescribed by that statute, the Bridges Acts, 1740—1815, cited in note to sec. 3 (viii), *supra*, and the Highway Act, 1835 (5 & 6 Will. 4, c. 50). As to the general liability of a surveyor, see note (*x*), *post*, p. 147.

(*m*) **Analysts.** See note (*g*) on page 5.

(*n*) **Explosives Act, 1875,** *post*, vol. ii. tit. "*Explosives*." The local authorities under that Act, as defined by sec. 67, were, in the City, the Court of the Lord Mayor and Aldermen; in the Metropolis, except the City, the Metropolitan Board of Works; and in any harbour within the jurisdiction of a harbour authority, the harbour authority, to the exclusion of any other local authority. The powers and duties of the Court of the Lord Mayor and Aldermen under the Act are transferred to the Common Council by sec. 41 (1) (a), *post*, and those of the Metropolitan Board of Works to the London County Council by sec. 40 (8), *post*. The City does not contribute to the County Council's expenses under the Act, which are therefore paid out of the special county rate. Secs. 41 (3) and 68 (3), *post*.

(*o*) **Coroners.** As to coroners' salaries, see the County Coroners Act, 1860, sec. 4; as to their fees, allowances, and disbursements, see the Coroners Act, 1844, sec. 21, and the Coroners Act, 1887, secs. 25—27; and as to the division of the county into coroners' districts, and the assignment of such districts, see the Coroners Act, 1844, secs. 2—6; and see note thereto for the present coroners' districts in the county of London. *Post*, vol. ii. tit. "*Coroners*." The City does not contribute to the County Council's expenses under these heads, which are therefore paid out of the special county fund. Secs. 41 (3) and 68 (3), *post*.

(*p*) **The county.** This means parliamentary county. For the application of this section where a parliamentary county is partly within and partly without the county of London, see sec. 92 (2), *post*.

(*q*) **Polling districts.** The Representation of the People Act, 1867 (30 & 31 Vict. c. 102), sec. 34, provides that the justices at general or quarter sessions "may, if they think convenience requires it, divide" the "county into polling districts, and assign to each district a polling place," and shall advertise the same "in such manner as they think fit." The Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), sec. 47, provides that every county shall be divided into polling districts, and a polling place shall be assigned to each district in such manner that, so far as is reasonably practicable, every elector resident in the county shall have his polling place within three miles of his residence, so nevertheless that a polling district need not in any case be constituted containing less than 100 electors. In every county the local authority shall from time to time divide the county into polling districts, and assign polling places to those districts, and alter those districts as may be necessary for the purpose of carrying into effect this section. The expenses incurred are to be defrayed as if they were expenses incurred by the registration officer, and the enactments respecting the registration of electors are to apply accordingly. *Ib.*

of election (*r*), the places of holding courts for the revision of the lists of voters (*s*), and the costs of and other matters to be done for the registration of parliamentary voters (*t*); 51 & 52 Vict. c. 41.

(xiii) The execution as local authority of the Acts relating to contagious diseases of animals(*u*), to destructive insects (*x*), to fish conservancy(*y*),

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Where a place situate in a parliamentary county becomes part of the county of a council other than the council having authority over the part which contains the largest number of parliamentary county occupation voters, then, for the purpose of polling districts, such place is deemed to be part of the same county as contains the largest number of parliamentary county occupation voters. Sec. 92 (2) and notes thereto, *post*.

If the County Council make any order with respect to polling districts or polling places in their county, they are required to send a copy of such order to one of Her Majesty's principal Secretaries of State, to be laid by him before both Houses of Parliament. Ballot Act, 1872 (35 & 36 Vict. c. 33), sec. 5.

The powers of the justices out of session as to the division of parliamentary boroughs into polling districts, and the assignment of polling places therein, is not transferred to the county council.

(*r*) **Places of election** are the places where the candidates' nomination papers are delivered to the returning officer and where the successful candidate is declared to be elected under the Ballot Act, 1872 (35 & 36 Vict. c. 33). They must not be confounded with the polling places referred to in the preceding note, where the electors record their votes. "The place of election in the case of a division of a county at large shall be in such town situate in the said county at large, or in a county of a city or town adjoining the said county at large, as the local authority having power to divide the division into polling districts, or in default of any determination by such local authority the returning officer, may from time to time determine, as being, in their or his opinion, the most convenient for the purposes of the election." Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), sec. 16 (1). The places of election in parliamentary boroughs are determined by the returning officer. *Ib.* sec. 16 (2).

(*s*) **Courts for revision of lists of voters.** By the Representation of the People Act, 1867, sec. 34, the justices were required to "name the polling places at which the revising barristers are to hold their courts." And the Registration Act, 1885 (48 Vict. c. 15), sec. 4 (4), provides that "When it appears to the local authority having power to assign polling places in a parliamentary county that, for the convenience of the voters in some polling district in such county, it is expedient to direct the holding of a revision court in a town near such polling district, although outside the boundary of the said county, the said authority may direct the revising barrister for the county to hold a revision court in such town."

(*t*) **Registration of parliamentary voters.** As to the costs of the registration of parliamentary voters, see the County Electors Act, 1888, secs. 8 and 9, *post*, vol. ii. tit. "*County Electors*," and the Registration of Electors Act, 1891, cited in note thereto.

The other matters to be done for the registration of parliamentary voters are provided for by the Registration of Electors Acts, 1843 to 1891, and the Registration Order, 1895, issued under sec. 76 (7) of the present Act, *post*. The clerk of the county council has important duties to perform with regard to the registration of electors, but the subject is beyond the scope of the present work, and is exhaustively treated in "Rogers on Elections," part i.

(*u*) **Contagious diseases of animals.** The law relating to this subject is consolidated by the Diseases of Animals Act, 1894, *post*, vol. ii. tit. "*Diseases of Animals*." The Common Council is the local authority for the City, and is also the local authority for the county of London for the purpose of the provisions of the Act relating to foreign animals. With this exception, the County Council is the local authority for the Metropolis exclusive of the City. *Ib.* sec. 3. The County Council may delegate its powers under the Act either to a committee of its own body or to the justices in petty sessions (sec. 28 (2), *post*), subject to the restriction contained in sec. 31 (2) of the Diseases of Animals Act, 1894. The County Council's expenses under the Act are defrayed out of the general county fund. *Ib.* sec. 40 (3).

(*x*) **Destructive insects.** See the Destructive Insects Act, 1877, *post*, vol. ii. The Common Council is the local authority for the City, and the County Council for the rest of London, the expenses of the latter, however, being paid out of the general county fund. *Ib.* sec. 4, and note thereto.

(*y*) **Fish conservancy—Lee and Thames Conservators.** The law relating to the preservation of fish, and the formation of freshwater fishery districts, is contained in the Salmon and Freshwater Fisheries Acts, 1861 to 1892. They have, however, little or no application to London, as the conservancy of fish in the only two rivers of

51 & 52 Vict. c. 41.

to wild birds (*z*), to weights and measures (*a*), and to gas meters (*b*) and of the Local Stamp Act, 1869 (*c*);

32 & 33 Vict. c. 49.

(xiv) *Any matters arising under the Riot (Damages) Act*, 1886 (*d*);

49 & 50 Vict. c. 38.

(xv) The registration of rules of scientific societies under the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter thirty-six (*e*); the registration of charitable gifts under the Act of the session of the fifty-second year of the reign of George the Third, chapter one hundred and two (*f*); the certifying and recording of places of religious worship under the Act of the session of the fifty-second year of the reign of George the Third,

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importance in the county, viz., the Lee and the Thames, is entrusted to the respective conservators of those rivers.

By the *Lee Conservancy Act*, 1868 (31 & 32 Vict. ch. cliv.), a body of thirteen conservators is established, to be called the Lee Conservancy Board, of whom one is appointed by the Common Council of the City, and one by the London County Council (secs. 5 and 7). Each conservator so appointed continues in office for four years (Lee Conservancy Act, 1874 (37 & 38 Vict. ch. xcvi.), sec. 15), subject to the determination of his appointment at any time by the authority appointing him. Lee Conservancy Act, 1868, sec. 57 (3). The Lee Conservancy Board may make byelaws for the protecting and regulating of the fisheries, and the preservation of the fish in the Lee and its tributaries, subject to confirmation by Order in Council. *Ib.* secs. 120 and 124. Such byelaws have been made, and have been approved by Order in Council dated March 24th, 1871.

The *Thames Conservancy Act*, 1894 (57 & 58 Vict. ch. clxxxvii.), provides for the constitution of the "Conservators of the River Thames." They are thirty-eight in number, of whom six are appointed by the Common Council of the City, and six by the London County Council. *Ib.* sec. 8. One-third of the conservators so appointed retire annually. To fill the vacancies thus created, every year the Common Council appoints two conservators, and the London County Council two, who continue in office for three years. *Ib.* sec. 9. The conservators so appointed must be members of the council which appoints them, and if they cease to be such members, they, *ipso facto*, cease to be conservators. *Ib.* sec. 28. They are removable at any time by the council appointing them, provided that at least seven days' notice in writing is given to every member of such council before its meeting, and that the removal shall be determined upon by a majority of two-thirds of the members of such council. *Ib.* sec. 30. The conservators are empowered to make byelaws for the protecting and regulating of the fishing and the preservation of the fish in the River Thames, provided they are not repugnant to the laws of England, and subject to confirmation by the Board of Trade. *Ib.* secs. 191—193. The byelaws made by the conservators under their former Acts, and confirmed by Order in Council dated Aug. 26th, 1893, for the protection, preservation, and regulation of the fisheries in the River Thames, are still in force.

(*z*) **Wild birds.** See the Wild Birds Protection Acts, 1880, 1881, 1894, and 1896, *post*, vol. ii. tit. "*Wild Birds.*"

(*a*) **Weights and measures.** These Acts are the Weights and Measures Acts, 1878, 1889, and 1892, *post*, vol. ii. The Common Council is the local authority in the City. Sec. 41 (1) (a) *post*, and Weights and Measures Act, 1889, sec. 16. The City does not contribute to expenses of the County Council in the execution of the Acts, which are therefore charged to the special county fund. Secs. 41 (3) and 68 (3), *post*.

(*b*) **Gas meters.** See the Gas Meters Act, 1859, *post*, vol. ii., and the Metropolis Gas Act, 1861, cited in note to sec. 4 of that Act. The latter Act transferred the powers of the justices under the former Act to the Metropolitan Board of Works throughout the Metropolis, including the City, but exempted the City from contributing to the expenses incurred by the Board in respect thereto. These powers are now transferred to the County Council by sec. 40 (8), *post*, and the expenses are paid out of the special county fund. Secs. 41 (3), and 68 (3), *post*.

(*c*) **Local Stamp Act**, 1869, set out *post*, vol. ii. The powers of the County Council under the Act are exercised through the Standing Joint Committee of the quarter sessions and the County Council. Sec. 30 (3), *post*.

(*d*) **Riot (Damages) Act, 1886.** This sub-section does not apply to London. See sec. 93 (2), *post*, and note thereto.

(*e*) **Registration of rules of scientific societies.** See the Scientific Societies Act, 1843, *post*, vol. ii.

(*f*) **Registration of charitable gifts.** See the Charitable Donations Registration Act, 1812, *post*, vol. ii. tit. "*Charities.*"

chapter one hundred and fifty-five (*g*); the confirmation and record of the rules of loan societies under the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and ten (*h*); and 51 & 52 Vict. c. 41.

(xvi) Any other business transferred by this Act (*i*).

Transfer of certain powers under local Acts.

4. Where it appears to the Local Government Board that any powers, duties, or liabilities (*k*) of any quarter sessions or justices, or any committee thereof, under any local Act are similar in character to the powers, duties, and liabilities transferred to county councils by this Act, or relate to property transferred to a county council by this Act, the Board may, if they think fit, make a provisional order for transferring such powers, duties, and liabilities to the county council (*l*).

Appointment of coroners by county council.

5.—(1) After the appointed day a coroner for a county shall not be elected by the freeholders of the county, and on any vacancy occurring in the office of a coroner for a county, who is elected to that office in pursuance of a writ de coronatore eligendo, a like writ for the election of a successor shall be directed to the county council of the county instead of to the sheriff, and the county council shall thereupon appoint a fit person (*m*), not being a county alderman or county councillor, to fill such office, and in the case of a county divided into coroners' districts shall assign him a district; and any person so appointed shall have like powers and duties, and be entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof.

(2) Where the district of any such coroner is situate wholly within any administrative county, the council of that county shall, subject as hereinafter mentioned, appoint the coroner (*n*).

(4) [*Appointment of coroner where district situate in more than one administrative county, forming part of an entire county.*]

(5) Nothing in this Act respecting the appointment of a coroner shall alter the jurisdiction of a coroner for the entire county, or any power of removing such coroner, whether by writ de coronatore exonerando or otherwise, and all writs for the election or removal of a coroner shall be altered so as to give effect to this section.

(6) Sections eleven and fourteen and the first schedule of the Coroners Act, 1887, and any other enactment relating to the election of a coroner 50 & 51 Vict. c. 71.

(*g*) **Certifying and recording places of religious worship.** See the Places of Religious Worship Act, 1812, *post*, vol. ii.

(*h*) **Confirmation and record of rules of loan societies.** See the Loan Societies Act, 1840, *post*, vol. ii.

(*i*) **Any other business.** If any question arises as to whether any business is or is not transferred, it may be submitted to the High Court in a summary manner. Sec. 29, *post*.

(*k*) **Powers, duties, liabilities, and property** are defined, sec. 100.

(*l*) **Provisional order.** The Local Government Board had not, up to the end of the year 1896, issued under this section any provisional order affecting London.

(*m*) **Fit person.** As to the property qualification of a coroner, see the Coroners Act, 1887, sec. 12, *post*, vol. ii.

(*n*) **Appointment of coroners by county council.** The right of appointing coroners conferred on the County Council by this section is confined to the appointment of coroners for counties who, prior to the passing of this Act, were elected by the freeholders, in pursuance of a writ de coronatore eligendo, and does not extend to the appointment of coroners for liberties and other franchises. *London County Council, Ex parte* (1892), 1 Q. B. 33; 61 L. J. Q. B. 27. As to the appointment of the City and other franchise coroners in the Metropolis, see Coroners Act, 1887, secs. 29, 30, and 42, *post*, vol. ii. tit. "*Coroners*."

51 & 52 Vict. c. 41.

for a county by the freeholders of such county or any district thereof, are hereby repealed as from the appointed day, without prejudice to anything done or suffered, or any legal proceeding commenced or penalty incurred before such repeal takes effect.

(7) A person who holds the office of coroner shall not be qualified to be elected as a county alderman or county councillor for the county for which he is a coroner.

Power of council as to bridges.

6. The county council shall have power to purchase, or take over on terms to be agreed on, existing bridges (*o*) not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected.

Transfer to county council of certain powers of justices out of session.

7. There shall be transferred to the county council on and after the appointed day the business of the justices of the county out of session—

(a) in respect of the licensing of houses or places for the public performance of stage plays (*p*), and

38 & 39 Vict. c. 17.

(b) in respect of the execution as local authority of the Explosives Act, 1875 (*q*).

Reservation of business to quarter sessions.

8.—(1) Nothing in this Act shall transfer to a county council any business of the quarter sessions or justices in relation to appeals by any overseers or persons against the basis or standard for the county rate or against that or any other rate (*r*).

(2) All business of the quarter sessions or any committee thereof not transferred by or in pursuance of this Act to the county council shall be reserved to and transacted by the quarter sessions or committee thereof in the same manner, as far as circumstances admit, as if this Act had not passed.

9. [*Powers as to police. Inapplicable to London. See sec.* 93, *post.*]

Transfer to county council of powers of certain Government departments and other authorities (*s*).

10.—(1) After the passing of this Act it shall be lawful for the Local Government Board to make from time to time a provisional order for transferring to county councils—

(a) any such powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government department,

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(*o*) **Existing bridges.** For definition of "existing," see sec. 100, *post*. As to bridges generally, see sec. 3 (viii), and note thereto, *ante*.

(*p*) **Houses for . . . stage plays.** Houses and other places for the public performance of stage plays are licensed under the Theatres Act, 1843, *post*, vol. ii. tit. "*Theatres*," &c. The authority of the county council is confined to the county outside the Lord Chamberlain's jurisdiction, for the extent of which see *ib.* sec. 3, and note thereto. The powers and duties here transferred to the county council may be delegated to either a committee of their own body or to the justices of the county sitting in petty sessions. Sec. 28 (2), *post*.

(*q*) **Explosives Act, 1875.** Set out *post*, vol. ii. The county council may delegate their duties under this Act either to a committee of the council, or to the justices of the county in petty sessions. Sec. 28 (2), *post*.

(*r*) **Appeals against county rate.** See sec. 3 (1) and note thereto, *ante*. In the hamlet of Penge appeals against the basis or standard for the county rate are made under the County Rates Act, 1852, secs. 17—19, *post*, vol. ii., and in the remainder of the Metropolis under the Valuation (Metropolis) Act, 1869, *post*, vol. ii.

(*s*) **Transfer of powers to county council.** The only provisional order made under this section is contained in the Local Government Boards Provisional Orders Confirmation (No. 12) Act, 1894 (57 & 58 Vict. ch. cxxiv.), which transferred to the London County Council the powers and duties of the Commissioner of Police under the Common Lodging Houses Acts, 1851 and 1853, *post*, vol. ii.

as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character: also 51 & 52 Vict. c. 41.

(b) any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians) as are conferred by or in pursuance of any statute;

and such order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in Her Majesty in Council:

(2) Provided that before any such order is made, the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a Secretary of State, or the Board of Trade, or any other Government department, by such Secretary of State, Board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body; and every such provisional order shall be of no effect until it is confirmed by Parliament.

(3) If any such powers, duties, or liabilities as are referred to in any provisional order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils.

(4) The Act of Parliament confirming any provisional order made under this section shall be a public general Act (*t*).

Entire maintenance of main roads by county council (*u*). 41 & 42 Vict. c. 77.

11.—(1) Every road in a county, which is for the time being a main road within the meaning of the Highways and Locomotives (Amendment) Act, 1878 (*x*), inclusive of every bridge carrying such road if repairable

(*t*) **Provisional orders.** See sec. 87, *post*, for further regulations as to the making of provisional orders.

(*u*) **Maintenance of other roads, &c., by county council.** In addition to main roads, it is the duty of the County Council to maintain, manage, and control the Victoria Embankment, and to maintain, cleanse, and light the roadway thereof, and to make byelaws for the protection of the Embankment and its ornamental gardens, under the Thames Embankment Act, 1862 (25 & 26 Vict. c. 93), sec. 22; and the Thames Embankment (North) Act, 1872 (35 & 36 Vict. ch. lxvi.), secs. 3, 4, 5, and 8. The obelisk, or Cleopatra's Needle, on the Victoria Embankment, is placed under the care and control of the County Council, under the Monuments (Metropolis) Act, 1878 (41 & 42 Vict. c. 29), which imposes a penalty of not exceeding 5*l.* on any person injuring or disfiguring, or posting bills or placards on, the obelisk or any monuments erected or to be erected on the site of the Embankment.

It is also the duty of the County Council to manage, control, pave, repair, cleanse, and light the Albert Embankment and the adjoining footway, and to make byelaws for its protection under the Thames Embankment (South) Act, 1873 (36 Vict. ch. vii.), secs. 2—5; and to manage, maintain, light, &c., the Chelsea Embankment, and to make byelaws relating thereto, under the Metropolitan Board of Works (Various Powers) Act, 1876 (39 & 40 Vict. ch. lxxix.), secs. 34—36; and the London Parks and Works Act, 1887 (50 & 51 Vict. c. 34), secs. 1—3.

(*x*) **Main roads.** For the meaning of "main road," see the Highways and Locomotive (Amendment) Act, 1878, secs. 13 and 15, *post*, vol. ii. tit. "*Highways;*" and see note to *ib.* sec. 13, for a list of the main roads in the Metropolis at the passing of this Act. When used in relation to the district of any highway or road authority, "main road" means so much of the main road as is situate within the district of such authority. Sec. 100, *post*. It includes the footways upon or at the sides of the road, and the duty is imposed upon the county council of maintaining and repairing such

51 & 52 Vict. c. 41.

by the highway authority (*y*), shall, after the appointed day, be wholly maintained and repaired (*z*) by the council of the county in which the road is situate, and such council, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as a highway board (*a*), and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges (*b*), and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions (*c*), and for asserting the right of the public to the use and enjoyment of the roadside wastes (*d*); and the execution of this section shall be a general county purpose, and the costs thereof shall be charged to the general county account (*e*).

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footways. *Derby County Council* v. *Matlock Bath Urban District Council* (1896), A. C. 315; 65 L. J. Q. B. 419; and see cases there cited.

As to the reduction of a main road to the status of an ordinary highway, see the Highways and Locomotives (Amendment) Act, 1878, sec. 16, and note thereto, *post*, vol. ii. tit. "*Highways*."

(*y*) **Highway authority**, i.e., the Commissioners of Sewers in the City, and the respective vestries and district boards in the remainder of the Metropolis. See secs. 41 (4), and 100, *post*. This section does not alter the liability of any person or body of persons (e.g., a tramway company), not being a highway authority, to maintain and repair any road or part of a road. See sec. 97, *post*.

(*z*) **Maintained and repaired.** This includes the scavenging, i.e., watering, removing refuse, and scraping. *Burnley (Mayor of)* v. *Lancaster County Council*, 54 J. P. 279.

(*a*) **Powers, &c., of highway board.** For the powers and duties of a highway board, see the Highway Acts, 1835, 1862, and 1864 (5 & 6 Will. 4, c. 50; 25 & 26 Vict. c. 61; and 27 & 28 Vict. c. 101), and the Highway Rate Assessment and Expenditure Act, 1882 (45 & 46 Vict. c. 27), sec. 6. See also the Highways and Locomotives (Amendment) Act, 1878, *post*, vol. ii. tit. "*Highways*." Where the surveyor of a highway had the right to take gravel from a pit for repairs, it was held that that right passed to the county council on the highway being declared a main road. *Norfolk County Council* v. *Bittering*, 58 J. P. 497.

As to the general liability of a highway authority for accidents arising from the defective state of a highway, see note to sec. 96 of the Metropolis Management Act, 1855, *post*.

(*b*) **Bridges.** As to the maintenance and repair of bridges, see sec. 3 (viii), and note thereto, *ante*.

(*c*) **Removing obstructions.** See further, as to the power of the County Council to remove obstructions and encroachments "in upon over or under any street," the London Building Act, 1894, sec. 199, *post*, p. 471. For similar powers of vestries and district boards, see the Metropolis Management Act, 1855, sec. 108, *post*.

Under the Local Government Act, 1894, sec. 26 (1), it has been held that an urban district council have power to remove an obstruction or encroachment upon a highway vested in them, without first taking proceedings, either summarily or by indictment, against the person alleged to have caused the obstruction or encroachment; but they do so at their own risk, and the onus is on them to show that the obstruction or encroachment did in fact exist. *Reynolds* v. *Presteigh Urban District Council* (1896), 1 Q. B. 604; 65 L. J. Q. B. 400. And they may recover the expenses of removal in an action against the obstructor. *Louth Rural District Council* v. *West*, 65 L. J. Q. B. 535; 12 T. L. R. 477. Under the same Act, it was held that a local board, discharging duties in relation to the protection of public rights of way, are not acting judicially, and that in an action to restrain a local board from removing posts erected across a public footpath, the question at issue is whether or not the posts constituted an obstruction, and that the question whether a member of the board, to serve his own private interest, used his influence with the board to prevent their removal, was irrelevant. *Murray* v. *Epsom Local Board* (1897), 1 Ch. 35; 66 L. J. Ch. 107.

(*d*) **Roadside wastes.** Strips of grass bordering the metalled part of a main road are "roadside wastes" within the meaning of this sub-section. The herbage on such roadside wastes is not vested in the county council by virtue of sub-section (6), *infra*, and the county council are not entitled to dispose of the grass, timber, and other growths thereon. *Curtis* v. *Kesteven County Council*, 45 Ch. D. 504; 60 L. J. Ch. 103.

(*e*) **"General county purpose"** and **"general county account"** are defined by sec. 68 (2), *post*.

(2) Provided that any urban authority (*f*) may, within twelve months after the appointed day, or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, and the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road (*g*). 51 & 52 Vict. c. 41.

(3) The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may *be determined by arbitration of the Local Government Board* (*h*).

(4) The county council and any district council (*i*) may from time to time contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, and, if the county council so require, the district council shall undertake the same, and such undertaking shall be in consideration of such annual payment by the county council for the costs of the undertaking as may from time to time be agreed upon, or, in case of difference, *be determined by arbitration of the Local Government Board* (*h*) ; and for the purposes of such undertaking the district council shall have the same powers (*k*) and be subject to the same duties and liabilities as if the road were an ordinary road vested in them.

(5) Provided that in no case shall a county council make any payment

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(*f*) **Urban authority.** The Common Council in the City of London, and in any other part of the Metropolis, the vestry, or district board, is deemed to be a district council and an urban authority within the meaning of the provisions of this Act with respect to main roads. Sec. 41 (4) (b), *post.*

(*g*) **Annual payment towards costs.** In a case submitted to the High Court under sec. 29, *post*, the Court was of opinion that where an urban authority retains the powers and duties of maintaining a main road, the obligation of the county council is to repay to such authority the actual reasonable cost of the maintenance and repair during any year, whether such cost be normal or increased by reasonable improvements. But the council have only to defray the expense in the same way as the urban authority do, whether it be defrayed out of current rates or out of a loan. If the urban authority spread the cost over more than one year, the county council may do the same. *Marlborough Town Council* v. *Wilts County Council*, 58 J. P. 213. But in a later case it was held that the county council is not necessarily liable to pay the whole amount expended by the urban authority ; that in default of agreement the amount can only be determined by the arbitration of the Local Government Board under sec. 11 (3) ; and that such amount is not a matter to be determined by the High Court under sec. 29, *post*. *Bedfordshire County Council and Bedford Urban Sanitary Authority, In re* (1894), 2 Q. B. 786 ; 64 L. J. Q. B. 26.

(*h*) **Be determined by arbitration of the Local Government Board.** For these words, the words "be determined by the Local Government Board either as arbitrators or otherwise, at the option of the Board," are substituted by the Loc. Govt. (Determination of Differences) Act, 1896 (59 Vict. c. 9).

(*i*) **District council.** See note to sub-section (2), *supra*, for the application of this expression to London.

(*k*) **Shall have the same powers.** Notwithstanding an agreement by which a highway board undertook for a consideration the repair and maintenance of the main roads within their district for a period of one year, it has been held that the county council continued to be the "road authority" in respect of such main roads, and were therefore entitled to the surplus material excavated in the course of the construction of a tramway along one of such roads. *Stockport Highway Board* v. *Cheshire County Council*, 61 L. J. Q. B. 22 ; 65 L. T. 85.

51 & 52 Vict. c. 41.

to a district council towards the costs of such undertaking as respects any road, or towards the costs of the maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed.

(6) A main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, vest in the county council (*l*), and where any sewer or other drain is used for any purpose in connection with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority (*m*) as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act (*n*).

(7) Where a county council declare a road to be a main road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.

(8) If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council (*o*), is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper repair and condition (*p*), and the expenses of so doing shall be a debt of the said district council to the county council.

(9) If any difference arises under this section between a county council and a district council as to the refusal of the county council to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a main road, or as to any notice given to the district council by the county council to place a road in proper

(*l*) **Vest in the county council.** This sub-section does not vest the herbage, timber and other growths on roadside wastes in the county council so as to enable the council to dispose of them. *Curtis* v. *Kesteven County Council*, *supra*. See as to the nature of the right of property acquired by the county council, in the sewers, note (*z*), *post*, p. 134; and in the roads, note (*a*), *post*, p. 149.

(*m*) **Highway or sanitary authority**, i.e., the Commissioners of Sewers in the City and the vestries and district boards in the remainder of the Metropolis. See sec. 41 (4) and 100, *post*.

(*n*) **In manner provided by this Act.** See sec. 62, *post*.

(*o*) **District council.** See note (*f*) to sub-section (2), *supra*, for the application of this expression to London.

(*p*) **County council may do everything.** See further as to the power of the county council to act where the highway authority make default in repairing a main road which they have undertaken to repair, the Highways and Locomotives (Amendment) Act, 1878, sec. 10, *post*, vol. ii.

repair and condition, such difference shall, if either council so require, *be referred to the arbitration of the Local Government Board* (*q*). 51 & 52 Vict. c. 41.

(10) The county council may, if they think fit, contribute towards the costs of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main road.

(11) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any main road in their district.

(12) Anything authorised or required by law to be done by or to a highway or road authority shall, as respects a main road maintained by a county council, be authorised or required to be done by or to that council; and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any main road in their district, but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council.

(13) *Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section* (*r*). 41 & 42 Vict. c. 77.

12. [*Roads and tolls in Isle of Wight.*]

13. [*Adaptation of Act to South Wales roads.* (7 & 8 *Vict. c.* 91.)]

14.—(1) On and after the appointed day a county council shall have power, in addition to any other authority, to enforce the provisions of the Rivers Pollution Prevention Act, 1876 (*s*) (subject to the restrictions in that Act contained), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other

Power to county council to enforce provisions of 39 & 40 Vict. c. 75.

(*q*) **"Be referred to the arbitration of the Local Government Board."** For these words the words "be determined by the Local Government Board, either as arbitrators or otherwise, at the option of the Board," are substituted by the Local Government (Determination of Differences) Act, 1896 (59 Vict. c. 9). See also sec. 63, *post*.

(*r*) **Highways and Locomotives (Amendment) Act, 1878.** Sec. 20 relates to the repair of main roads by a hundred instead of by the whole county, and does not apply to London.

(*s*) **Rivers Pollution Prevention Act, 1876.** The local authorities in the Metropolis under this Act are, in the City the Commissioners of Sewers, and in the remainder of the Metropolis the various vestries and district boards. *Ib.* sec. 20. The Lee Conservancy Board have, to the exclusion of any other authority, the powers of enforcing the Act within the area of their jurisdiction. *Ib.* sec. 9. Nothing in the Act is to interfere with, abridge, or prejudicially affect any right, power, authority or privilege of the Thames Conservators Acts, or the Lee Conservators or any outfall or other works of the Metropolitan Board of Works, executed under the Metropolis Management Act, 1855, and amending Acts. *Ib.* sec. 18. The Lee Conservancy Board has also various powers for the preservation and maintenance of the purity of the water of the Lee and its tributaries under the Lee Conservancy Act, 1868 (31 & 32 Vict. ch. cliv.), secs. 89—108. Extensive duties and powers are likewise given to the Thames Conservancy Board by the Thames Conservancy Act, 1894 (57 & 58 Vict. ch. clxxxvii.), secs. 90—108, for preventing the pollution of the River Thames and its tributaries. The London County Council is represented on both of these boards. See note to sec. 3 (xiii), *ante*. It will thus be seen that the Act has little practical effect in London.

51 & 52 Vict. c. 41.

authority having power to enforce the provisions of that Act, and the county were their district.

(2) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

(3) The Local Government Board, by provisional order made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers.

Council to have power to oppose bills in Parliament.

15. The county council of an administrative county shall have the same powers of opposing bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county, as are conferred on the council of a municipal borough by the Act of the thirty-fifth and thirty sixth years of Victoria, chapter ninety-one (*t*); and subject as hereinafter provided the provisions of that Act shall extend to a county council as if such council were included in the expression "governing body," and the administrative county were the district in the said Act mentioned.

Provided that—

(a) No consent of owners and ratepayers shall be required for any proceedings under this section;

(b) This section shall not empower a county council to promote any bill in Parliament, or to incur or charge any expense in relation thereto (*u*).

Power of county council to make bye-laws.
45 & 46 Vict. c. 50.
38 & 39 Vict. c. 55.

16.—(1) A county council shall have the same power of making bye-laws in relation to their county, or to any specified part or parts thereof, as the council of a borough have of making byelaws in relation to their borough under section twenty-three of the Municipal Corporations Act, 1882, and section one hundred and eighty-seven of the Public Health Act, 1875, shall apply to such byelaws (*x*):

(2) [*Byelaws not to be of any force in municipal borough.*]

Power of county councils to appoint medical officer of health.

17.—(1) The council of any county may, if they see fit, appoint and pay a medical officer of health, or medical officers of health (*y*), who shall

(*t*) **35 & 36 Vict. c. 91,** i.e., the Borough Funds Act, 1872, *post*, vol. ii. tit. "*Bills in Parliament.*"

(*u*) **Promote bill in Parliament.** Under the Metropolis Management Act, 1855, sec. 144, *post*, p. 167, and the Metropolis Management (Amendment) Act, 1856, sec. 10, *post*, p. 228, the London County Council has express power to make applications to Parliament where it appears to them that further powers are required for the improvement of the Metropolis or public benefit of the inhabitants, or for the purpose of providing parks, pleasure grounds, &c. The London Water Act, 1892, *post*, vol. ii. tit. "*Water*," also empowers the County Council to pay the costs and expenses of promoting bills in Parliament relating to the supply of water in London.

(*x*) **Byelaws.** See the Mun. Corp. Act, 1882, sec. 23, and notes thereto, *post*.

(*y*) **Medical officer of health.** This clause empowers the County Council to appoint medical officers of health of its own, in addition to the medical officers of health

not hold any other appointment or engage in private practice without express written consent of the council. 51 & 52 Vict. c. 41.

(2), (3) [*Arrangement between county council and district council as to medical officer of health. Inapplicable to London. See definition of district council in sec.* 100, *post.*]

Qualification of medical officers of health.

18. Except where the Local Government Board, for reasons brought to their notice, may see fit in particular cases specially to allow, no person shall hereafter be appointed the medical officer of health of any county or county district, or combination of county districts, or the deputy of any such officer, unless he be legally qualified for the practice of medicine, surgery, and midwifery (*z*).

(2) No person shall after the first day of January one thousand eight hundred and ninety-two be appointed the medical officer of health of any county or of any such district or combination of districts, as contained, according to the last published census for the time being, a population of fifty thousand or more inhabitants, unless he is qualified as above-mentioned, and also either is registered in the medical register as the holder of a diploma in sanitary science, public health, or State medicine under section twenty-one of the Medical Act, 1886, or has been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts, with a population according to the last published census of not less than twenty thousand, or has before the passing of this Act been for not less than three years a medical officer or inspector of the Local Government Board. 49 & 50 Vict. c. 48.

Power of county council as to report of medical officer of health.

19.—(1) Every medical officer of health for a district in any county shall send to the county council a copy of every periodical report (*a*) of which a copy is for the time being required by the regulations of the Local Government Board to be sent to the Board, and if a medical officer fails to send such copy the county council may refuse to pay any contribution, which otherwise the council would in pursuance of this Act pay, towards the salary of such medical officer (*b*).

(2) If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter (*c*).

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appointed by the various sanitary authorities in the Metropolis under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), sec. 106, *post.* As to who are the sanitary authorities in the Metropolis, see *ib.* sec. 99.

(*z*) **Legally qualified.** As to who is a "legally qualified medical practitioner," see note to sec. 21 (1) of the Public Health (London) Act, 1891, *post.*

(*a*) **Periodical report.** For regulations of the Local Government Board as to information and reports to be transmitted to the London County Council by the district medical officers of health, see the Sanitary Officers (London) Order, 1891, *post*, p. 374.

(*b*) **Salary of medical officer.** The County Council is required to pay one-half of the salary of every medical officer of health appointed under the Public Health (London) Act, 1891. *Ib.* sec. 108 (1), *post.*

(*c*) **Public Health Act, 1875.** Certain sections of this Act are applied to London by the Public Health (London) Act, 1891, secs. 14 (2), 21 (5), 102, 113, 114, and 129, and schedules 1 and 2, *post.* Under the latter Act the County Council has power to proceed in default of the sanitary authority in certain cases (*ib.* sec. 100); and to make complaint to the Local Government Board where the sanitary authority makes default in executing or enforcing any provisions of that Act, which it is their duty to execute or enforce. *Ib.* sec. 101, *post*, p. 335.

51 & 52 Vict. c. 41.

Financial Relations between Exchequer and County, and Contributions by County for Costs of Union Officers.

Payment to county council of proceeds of duties on local taxation licences.

20.—(1) After the financial year ending on the thirty-first day of March next after the passing of this Act, the Commissioners of Inland Revenue shall from time to time, in such manner and under such regulations as the Treasury from time to time prescribe, pay into the Bank of England to such account (in this Act referred to as the local taxation account) as may be fixed by the regulations, such sums as may be ascertained in manner provided by the regulations to be the proceeds of the duties collected by those Commissioners in each administrative county in England and Wales on the licences (in this Act referred to as local taxation licences) specified in the first schedule to this Act, and for the purposes of this section all penalties and forfeitures recovered in respect of the said duties shall be considered as part of the proceeds of the duties.

(2) The amount ascertained as aforesaid to have been collected in each county in respect of duties on local taxation licences shall, from time to time, be certified by the Commissioners of Inland Revenue, and paid under the direction of the Local Government Board out of the local taxation account to the council of such county. The Commissioners may, if they think fit, vary such certificate, but unless so varied, their certificate shall be conclusive.

(3) It shall be lawful for Her Majesty the Queen from time to time by order in council (*d*) made on the recommendation of the Treasury to transfer to county councils as from the date specified in the order the power to levy the duties on all or any of the local taxation licences, and after such date every county council and their officers shall (subject nevertheless to any exceptions and modifications contained in the order) have within their county, for the purpose of levying the duties transferred, the same powers, duties, and liabilities as the Commissioners of Inland Revenue and their officers have with respect to the duties transferred, and to the issue and cancellation of licences on which the duties are imposed, and other matters under the Acts relating to those duties and licences, and all enactments relating to those duties and licences, and to punishments and penalties connected therewith, shall apply accordingly.

(4) Provided as follows :—

(i) All penalties and forfeitures recovered by a county council in pursuance of this section shall, instead of being paid to the Exchequer, be paid to the county fund, and carried to the same account as the duties.

(ii) The county council shall have, as respects the said duties and licences, the power given by the said Acts to the Treasury for the restoration of any forfeiture, and the mitigation or remission of any penalty or any part thereof.

(iii) Nothing in this section shall confer on the county council any special privileges of the Crown as respects legal proceedings.

(5) On a transfer under this section of the power to levy the duties on any licence—

(a) the county council shall provide for issuing, in different parts of their county, their licence for the same purpose, so as to enable persons to obtain it near their residences ; and

(*d*) **Order in Council.** The power to make an Order in Council under this section had not been exercised up to the end of 1896.

(b) if such licence has operation in any place in the United Kingdom outside the county in which it is issued, the licence of a county council for the same purpose shall continue to have the like operation outside the county in such place. 51 & 52 Vict. c. 41.

Grant to county council of portion of probate duty (*e*).

21. After the financial year ending the thirty-first day of March next after the passing of this Act, the Commissioners of Inland Revenue shall, from time to time, in such manner and under such regulations as the Treasury may from time to time prescribe, pay into the Bank of England to the local taxation account (*f*), such sums as may be ascertained in manner provided by the regulations to be four fifth parts of one-half of the proceeds of the sums collected by them in respect of the probate duties, and for the purpose of this section "probate duties" means the stamp duties charged on the affidavit required from persons applying for probate or letters of administration in England, Wales, or Ireland, and on the inventory exhibited and recorded in Scotland, and also the stamp duties charged on such accounts of personal and movable property as are specified in section thirty-eight of the Customs and Inland Revenue Act, 1881, and also includes the proceeds of all penalties and forfeitures recovered in relation to such stamp duties. 44 & 45 Vict. c. 12.

Distribution of probate duty grant (*g*).

22.—(1) The sums paid in pursuance of this Act to the local taxation account, in respect of the proceeds of the probate duties (in this Act referred to as the "probate duty grant"), shall, until Parliament other-

(*e*) **Probate duty; probate duty grant.** "In substitution for the grant out of the probate duties under the Local Government Act, 1888 . . . there shall be paid, out of the proceeds of the estate duty derived from personal property, such sum as the Commissioners, in accordance with the regulations made by the Treasury under these Acts, may determine to be an amount equal to one and a half per cent. on the net value of such property in respect of which estate duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), on Inland Revenue affidavits, and the first-mentioned Act (i.e., Local Government Act, 1888) shall apply as if the sum so determined were the probate duty grant or one-half of the proceeds of the sums collected in respect of the probate duties (as the case requires) within the meaning of these Acts." Finance Act, 1894 (57 & 58 Vict. c. 30), sec. 19. "The county council of every county . . . shall . . . from time to time appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal." *Ib.* sec. 10 (6).

(*f*) **Local taxation account.** By the Inland Revenue Act, 1890 (53 Vict. c. 8), sec. 7, it is enacted that (a) the additional duties on spirits imposed by that Act, and (b) such portion of the duties of excise and of customs imposed by sec. 11 of the Inland Revenue Act, 1880 (43 & 44 Vict. c. 20), and sec. 3 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), as amended by sec. 3 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), in respect of beer as equals threepence for every thirty-six gallons, shall be called the local taxation (customs and excise) duties, and that the proceeds of those duties shall be paid to the same local taxation accounts in like manner as the one-half of the proceeds of the probate duties applicable to local purposes is paid.

(*g*) **Distribution of local taxation account.** Out of the local taxation (customs and excise) duties (see note (*f*), *supra*), paid to the local taxation account on account of any financial year, 150,000*l.* is paid to the receiver of the metropolitan police district, and 150,000*l.* is distributed among the other police authorities, for the purposes of police superannuation, and the residue is distributed between county and county borough funds, and carried to the Exchequer contribution accounts of those funds respectively, and applied as if it were part of the share of the local taxation probate duty. Local Taxation (Customs and Excise) Act, 1890 (53 & 54 Vict. c. 60), secs. 1 (1) and 4.

51 & 52 Vict. c. 41.

wise determine, be distributed among the several counties in England and Wales in proportion to the share which the Local Government Board certify to have been received by each county during the financial year ending the thirty-first day of March next before the passing of this Act out of the grants heretofore made out of the Exchequer in aid of local rates, which will cease to be granted after the passing of this Act, and the share to be so certified shall be estimated in such manner as the Local Government Board direct.

(2) [*Applies only to Wales and Isle of Wight.*]

(3) The proportion to be paid to each county shall from time to time be paid under the direction of the Local Government Board to the county council out of the local taxation account. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

Application of duties on local taxation licences and probate duty grant.

23.—(1) All sums from time to time received by a county council in respect of—

(a) the duties on the local taxation licences, whether collected by the Commissioners of Inland Revenue or by the county council; and

(b) the probate duty grant (*h*),

shall be paid to the county fund and carried to a separate account, in this Act referred to as the Exchequer contribution account.

(2) All sums for the time being standing to the Exchequer contribution account shall be applied—

(i) in paying the costs incurred in respect thereof, or otherwise chargeable thereon; and

(ii) in payment of the sums required by this Act to be paid by the county council in substitution for local grants (*i*); and

(iii) in payment of the grant required by this Act to be made by the county council in respect of costs of union officers (*k*); and

(iv) in repaying to the general county account (*l*) of the county fund the costs on account of general county purposes (*l*) for which the whole of the area of the county is liable to be assessed to county contributions;

and shall be so applied in the order above mentioned (*m*).

(3), (4), (5), (6), (7), (8), (9), (10). [*These sub-sections provide for the payment of any surplus which remains, after paying the costs and sums referred to in sub-section* (2), *to the councils of quarter sessions boroughs, to the borough and county police funds, and to the district councils. They*

(*h*) **Probate duty grant.** See sec. 21, *ante*, and note thereto.

(*i*) **Local grants.** See secs. 24 and 43, *post*.

(*k*) **Union officers.** See sec. 43, *post*.

(*l*) **General county account; general county purposes.** See sec. 68 (2), *post*, for the meaning of these expressions.

(*m*) **Applied in order above mentioned.** The county council may contribute any sum received in respect of the residue of the local taxation (customs and excise) duties (see note (*f*), *supra*), or any part of that sum, for the purposes of technical education within the meaning of the Technical Instruction Act, 1889, *post*, vol. ii., and may make that contribution over and above any sum that may be raised by rate under that Act. Local Taxation (Customs and Excise) Act, 1890, sec. 1 (2). Where any moneys received under this last Act are directed by resolution of the county council to be appropriated for the purposes of technical or manual instruction, they shall, although not expended or specifically contributed or allotted in whole or in part before the end of the financial year, remain applicable for such purposes, and shall not be applied in manner provided by sec. 23 (2), *supra*, until the county council shall have made an order for such application. Technical Instruction Act, 1891, sec. 2, *post*, vol. ii.

do not appear to apply to London, and even if they did they are practically inapplicable, as, so far from there being any surplus, the amounts carried to the Exchequer contribution account are never nearly sufficient to meet the expenditure under the heads in sub-section (2).] 51 & 52 Vict. c. 41.

Payments by county council in substitution for annual local grants out of Exchequer in aid of local rates.

24. Whereas certain grants heretofore made out of the Exchequer in aid of local rates (in this Act referred to as local grants) will by reason of the duties on the local taxation licences and the probate duty grant (*n*) being by this Act made payable to local authorities, cease, it is therefore hereby enacted as follows:—

(1) So much of any enactment as requires or authorises payment out of the Exchequer of any local grant in substitution for which the county council is required by this Act to make any payment is hereby repealed as from the thirty-first day of March next after the passing of this Act without prejudice to any right accrued before that day.

(2) In substitution for local grants, the council of each county shall from time to time as from the said day pay out of the county fund and charge to the Exchequer contribution account the following sums, that is to say—

(a) they shall pay to the guardians for every poor law union or officer for any other area wholly or partly in the county (as the case may be) such sums as the Local Government Board from time to time certify to be due from the said council in substitution for the local grants towards the remuneration of teachers in poor law schools, and for payments to public vaccinators under section five of the Vaccination Act, 1867 (*o*); and 30 & 31 Vict. c. 84.

(b) they shall pay to the guardians of every poor law union the school fees paid for pauper children sent from a workhouse to a public elementary school outside the workhouse; and

(c) they shall pay to every local authority, for any area wholly or partly in the county, by whom a medical officer of health or inspector of nuisances is paid, one-half of the salary of such officer, where his qualification, appointment, salary, and tenure of office are in accordance with the regulations made by order under the *Public Health Act*, 1875 (*p*), or any Act repealed by that Act, but if the Local Government Board certify to the council that such medical officer has failed to send to the Local Government Board such report and returns as are for the time being required by the regulations respecting the duties of such officer made by order of the Board (*q*) under any of the said Acts, a sum equal to such half of the salary shall 38 & 39 Vict. c. 55.

(*n*) **Probate duty grant.** See sec. 21, *ante*, and note thereto.

(*o*) **The Vaccination Act, 1867,** sec. 5, enacts:—"On reports made to the Lords of Her Majesty's Council with regard to the number and quality of the vaccinations performed in the several vaccination districts of England, or any of them, the said Lords may from time to time, under regulations to be approved by the Treasury, authorise to be paid to any public vaccinators, in addition to the payments received by them from guardians or overseers, further payments not exceeding in any case the rate of one shilling for each child whom the vaccinator has successfully vaccinated during the time to which the award of the said Lords of the Council relates."

(*p*) **Public Health Act, 1875.** Medical officers of health in London are now appointed under the Public Health (London) Act, 1891, sec. 106, *post*. This section is to be construed as if the reference to the Public Health Act, 1875, included a reference to that Act, and one-half of the salary of every medical officer of health and sanitary inspector appointed under that Act, is to be paid by the County Council. *Ib.* sec. 108.

(*q*) **Order of the Board.** See the Sanitary Officers (London) Order, 1891, *post*, p. 374.

51 & 52 Vict. c. 41.

be forfeited to the Crown, and the council shall pay the same into Her Majesty's Exchequer and not to the said local authority; and

(d) they shall pay to the guardians paying the registrars of births and deaths for any district wholly or partly in the county a sum equal to the amount paid out of local grants towards the remuneration of the registrars paid by those guardians during the financial year ending on the thirty-first day of March next after the passing of this Act; and

(e) they shall transfer to that account of the county fund to which the maintenance of any pauper lunatic chargeable to the county is charged, a sum equal to four shillings a week for each such pauper lunatic, for whom the net charge upon the county council, after deducting any amount received by the county council for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so transferred; and

(f) they shall pay to the guardians of every poor law union wholly or partly in the county a sum equal to four shillings a week for each pauper lunatic chargeable to that union, and maintained in an asylum (*r*), registered hospital, or licensed house, for whom the net charge upon the guardians, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid; and

(g) they shall pay to the council of each borough (*s*) to which the maintenance of any pauper lunatic is chargeable, a sum equal to four shillings a week for each such pauper lunatic for whom the net charge upon the council of the borough, after deducting any amount received by them for the maintenance of such lunatic from any source other than local rates, is equal to or exceeds four shillings a week throughout the period of maintenance for which the sum is so paid; and

(h) they shall transfer to that account of the county fund to which the compensation payable to the clerk of the peace of a county, or any other officer of quarter sessions for the county, under section eighteen of the Act of the session of the eighteenth and nineteenth years of the reign of Her present Majesty, chapter one hundred and twenty-six is charged, the amount of such compensation (*t*); and

(i), (j) [*Contributions to county and borough police. Inapplicable to London. See sec.* 93 (1), *post.*]

(k) they shall, if within their county sums are raised by rates for the purpose of the metropolitan police, pay to the receiver for the the metropolitan police district in each year, a sum bearing such

(*r*) **Maintained in an asylum.** For the purposes of this sub-section a lunatic boarded out by the asylum authorities is deemed to be a lunatic maintained in an asylum. Lunacy Act, 1890, sec. 57 (3), *post*, vol. ii.

(*s*) **Council of each borough.** The provisions of this section are applied to the Common Council of the City by sec. 41 (2), *post.*

(*t*) **Compensation to clerk of peace.** 18 & 19 Vict. c. 126, is the Criminal Justice Act, 1855. Sec. 18 provides for the payment to clerks of the peace and other officers of the difference between the annual amount received by them prior to the Act, computed on an average of the five years immediately preceding the passing of the Act (August 14th, 1855), and the annual amount received by them subsequently, in the event of any decrease in the amount of their fees and emoluments.

proportion to the sum actually raised in the same year by rates from the parishes in that county for the said purpose as a Secretary of State certifies to be the proportion which would have been contributed out of the Exchequer under the arrangement in force during the financial year next before the passing of this Act (*u*). 51 & 52 Vict. c. 41.

(3) *A reference in sections one hundred and eighty-nine and one hundred and ninety-one of the Public Health Act*, 1875, *to officers any portion of whose salary is paid out of moneys provided by Parliament shall be construed to refer to those officers in respect of whose salaries payment is made by a county council in pursuance of this section* (*x*).

(4) [*Payments under the County and Borough Police Act*, 1856 (19 & 20 *Vict. c.* 69). *Inapplicable to London. See sec.* 93 (1), *post.*]

(5) Where a sum is payable under this section to the guardians, authority, or officer of a union or other area, and such union or area is situate in more administrative counties than one (*y*), a proportionate part only of the sum otherwise payable shall be paid by the council of each of such counties to the guardians, authority, or officer, and the Local Government Board shall certify the proportionate part due from the council of each such county.

(6) The guardians, authority, or officer to whom a sum is payable under this section on the certificate of the Local Government Board, shall submit to the Board their claim to the payment in such manner, and produce such evidence and comply with such rules as the Board from time to time require or make, and the Board shall fix the amount due on the like principles, and may impose the like conditions for the payment thereof as before the passing of this Act.

(7) The Local Government Board may, if they think fit, vary a certificate granted for the purposes of this section, but, unless so varied, it shall be conclusive.

(25) [*Certificate of Secretary of State respecting efficiency of police under the County and Borough Police Act*, 1856 (19 & 20 *Vict. c.* 69). *Inapplicable to London. See sec.* 93 (1), *post.*]

Grant by county council towards costs of officers of union.

26.—(1) After the thirty-first day of March next after the passing of this Act, every county council, other than the London County Council (*z*), shall grant to the guardians of every poor law union wholly or partly in their county, an annual sum for the costs of the officers of the

(*u*) **Metropolitan police.** The sum contributed by the Exchequer for the purpose of the metropolitan police during the financial year 1887—1888 was 570,841*l.*, of which 454,923*l.* was calculated to be the proportionate share of the Metropolis. The above amount is equal to four-ninths of the total cost, exclusive of the salaries of the Commissioners and the Receiver, and the non-effective charges. *See Financial Statement issued by the Local Government Board, June 21st*, 1888. The sums payable to the Receiver under this sub-section are paid to him direct out of the local taxation account, and are deducted from the amount payable to the County Council out of that account. Sec. 27 (1), *post*. See also sec. 93 (1) and note thereto, *post*.

(*x*) **Sub-section (3).** The provisions of this sub-section, and of secs. 189 and 191 of the Public Health Act, 1875, were applied to the Metropolis by sec. 88 (c), *post*, which is repealed by the Public Health (London) Act, 1891, sec. 142, *post*, p. 355. Those provisions, therefore, only affect such medical officers of health in London, if any, as were appointed during the years 1889, 1890, or 1891.

(*y*) **Union in more administrative counties than one.** The only portion of the Metropolis affected by sub-section (5) is the hamlet of Penge, which is included in the Croydon Union. See the Valuation (Metropolis) Act, 1869, sec. 3, and note thereto, *post*, vol. ii.

(*z*) **Other than the London County Council.** This section would appear to apply to London in so far as relates to the hamlet of Penge. See sec. 43 (1) (c), *post*.

51 & 52 Vict. c. 41.

union and of district schools to which the union contributes; and, until Parliament otherwise determine, the said annual sum shall be such sum as the Local Government Board certify to have been expended by the guardians of each poor law union during the financial year ending the twenty-fifth day of March next before the passing of this Act, on the salaries, remuneration, and superannuation allowances of the said officers (other than teachers in poor law schools), and on drugs and medical appliances.

(2) Where a poor law union is situate in more counties than one, the payment under this section to the guardians of the union shall be borne by the counties in which each portion of such union is situate, in proportion to the rateable value of that portion, ascertained on such day as the Local Government Board may fix.

Supplemental provisions as to local taxation account and Exchequer contribution account.

27.—(1) When a county council are required under the provisions of this or any other Act to pay any sum into Her Majesty's Exchequer (*a*), or to the Treasury, or to the receiver for the metropolitan police district (*b*); such sum shall be deducted from the amount payable under the provisions of this Act out of the local taxation account (*c*) to such county council, and instead of being paid to the county council, shall be paid into Her Majesty's Exchequer, or to the receiver for the metropolitan police district, as the case requires.

(2) The account of the receipts and expenditure of the local taxation account shall be audited as a public account by the Comptroller and Auditor-General in accordance with such regulations as the Treasury may from time to time make.

(3) If at any time in any financial year the moneys standing to the local taxation account are insufficient to meet such sums as the Local Government Board consider proper for the time being to pay thereout, the Local Government Board may borrow temporarily on the security of the said account and of moneys becoming payable thereto such sums as they require for the purpose of meeting such deficiency, and the Bank of England may lend such sums, but all sums so borrowed shall be repaid with the interest thereon during the same financial year out of moneys payable to the said account.

General Provisions as to Transfer.

General provisions as to powers transferred to county council.

28.—(1) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified (*d*), but save as aforesaid, shall have and be subject to all the powers, duties, and liabilities (*e*), which the quarter sessions, or any committee thereof, or any justice or justices had or were subject to in respect of the business so transferred.

(*a*) **Payments into the Exchequer.** See sec. 24 (2) (c), *ante*.

(*b*) **Payment to receiver of metropolitan police district.** See sec. 24 (2) (k), *ante*.

(*c*) **Payable out of local taxation account.** See secs. 20 (2) and 22, *ante*.

(*d*) **In this Act specified.** As to rating appeals and business not transferred from the quarter sessions, see sec. 8, *ante*; as to powers, duties, and liabilities transferred from the quarter sessions of Middlesex, Surrey, and Kent to the London County Council, see sec. 40 (6), (7); as to powers, &c., transferred from the quarter sessions of the City to the Common Council, see sec. 41; as to transfer from liberties and franchises, see sec. 48. For the construction of Acts referring to any business, powers, and duties transferred, see sec. 78.

(*e*) "**Powers, duties, and liabilities**" are defined by sec. 100, *post*. As to their application to music and dancing licences, see note to sec. 3 (v), *ante*.

(2) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, either to any committee (*f*) of the county council appointed in pursuance of this Act, *or to any district council in this Act mentioned* (*g*); the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays (*h*), and in respect of the execution as local authority of the Explosives Act, 1875 (*i*), or of the Act relating to contagious diseases of animals (*k*). 51 & 52 Vict. c. 41. 38 & 39 Vict. c. 17.

(3) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

Summary proceeding for determination of questions as to transfer of powers.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Court of Justice in such summary manner as subject to any rules of court may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question (*l*).

Standing joint committee of quarter sessions and county council for the purpose of police, clerk of the peace, officers, &c.

30.—(1) For the purpose of *the police* (*m*), and the clerk of the peace, and of clerks of the justices (*n*), and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee (*o*) of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county

(*f*) **Delegate to committee.** For further provisions and regulations as to committees see the Municipal Corporation Act, 1882, sec. 22, *post*, p. 84, and notes thereto. A body appointing a committee does not thereby deprive itself of the powers delegated to the committee, and may itself exercise such powers at any time without previously revoking the authority of the committee. *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120.

(*g*) **District council.** This expression, save as to main roads, applies only to places outside the Metropolis. Sec. 100, *post*.

(*h*) **Stage plays.** See sec. 7 (a), *ante*, and the Theatres Act, 1843, *post*, vol. ii.

(*i*) **Explosives Act, 1875.** See secs. 3 (x) and 7 (b), *ante*, and the Act itself, *post*, vol. ii.

(*k*) **Diseases of animals.** See sec. 3 (xiii), *ante*. The power of the county council to delegate its powers under the Contagious Diseases (Animals) Act, 1894, to the justices is subject to the proviso contained in sec. 31 (2) of that Act, *post*, vol. ii.

(*l*) **Submitted to High Court.** An application to set down a case for argument under this section may be made direct to the Divisional Court. *Ex parte Chairman of Staffordshire Quarter Sessions*, 24 W. N. (1889), p. 183. In stating a case, facts which have actually arisen only must be set forth and the decision thereon. The Court will not answer abstract questions as to the construction of the Act, unless arising out of facts which have actually occurred. *In re Cardigan County Council*, 54 J. P. 792. The jurisdiction of the Divisional Court upon questions submitted to it is consultative only and not judicial, and no appeal lies from its decision. *Kent County Council, Ex parte* (1891), 1 Q. B. 725; 60 L. J. Q. B. 435. This section does not give the Court jurisdiction on a case stated to decide questions of adjustment of liabilities under sec. 62, *post*. *In re Salop County Council*, 65 L. T. 416; 56 J. P. 213. As to questions relating to the maintenance of main roads, arising between the county council and local bodies, see sec. 11 (2) and cases cited in note thereto.

(*m*) **Police.** The metropolitan police are not affected by this section. See sec. 93, *post*.

(*n*) **Clerk of the peace; clerks of the justices.** See secs. 83 and 84, *post*.

(*o*) **Standing joint committee.** See sec. 81, *post*.

51 & 52 Vict. c. 41.

council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

(2) The joint committee shall elect a chairman, and, in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

(3) Any matter arising under this Act with respect to *the police* (*p*), or to the clerk of the peace, or to clerks of the justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions (*q*) or justices out of session or to the use by them *or the police* (*p*) or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869 (*r*), to any sums received by clerks to justices, or with respect to anything incidental to the above-mentioned matters, and any other matter requiring to be determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section; and all such expenditure as the said joint committee determine to be required for the purposes of the matters above in this section mentioned, shall be paid out of the county fund (*s*), and the council of the county shall provide for such payment accordingly.

32 & 33 Vict. c. 49.

PART II.—APPLICATION OF ACT TO BOROUGHS, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES.

Application of Act to Boroughs (*t*).

31. [*Certain large boroughs named in the schedule to be county boroughs.*]

32.—(1) [*Adjustment of financial relations between counties and county boroughs.*]

33. [*Provisions as to police and rateable value in county boroughs.*]

34. [*Application of Act with modifications to county boroughs.*]

Application of Act to larger quarter sessions boroughs not county counties.

35. In the case of a quarter sessions borough, not being one of the boroughs named in the third schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, on and after the appointed day, apply :—

(1) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act (*u*). . . .

(*p*) **Police.** See note (*m*) on page 25.

(*q*) **Accommodation for quarter sessions.** As to the accommodation to be provided for the quarter sessions and justices, see sec. 64 (3), *post*. The county council has exclusive control of the buildings and premises provided under this section, but all questions as to their maintenance, alteration, &c., are to be determined by the standing joint committee. The county council has no power to place its veto upon the requirements of the joint committee, and must raise and pay such sums as that committee deem necessary to expend in and about such buildings. *Ex parte Somerset County Council*, 58 L. J. Q. B. 513 ; 61 L. T. 512.

(*r*) **Local Stamp Act, 1869.** See sec. 3 (xiii), *ante*, and the Act itself, *post*, vol. ii.

(*s*) **County fund.** See secs. 68 and 80, *post*.

(*t*) **Boroughs,** i.e., municipal boroughs. See sec. 100, *post*.

(*u*) **Quarter session borough.** Such of the powers, duties, and liabilities of the court of quarter sessions and justices of the City of London as would, if the City were a quarter sessions borough with a population exceeding ten thousand, be exercised by

51 & 52 Vict. c. 41.

General application of Act to boroughs with separate commission of the peace.

36.—(1) Where a borough has a separate commission of the peace, whether a quarter sessions borough or not (and is not a borough named in the third schedule to this Act), then, subject to the provisions of this Act, all such powers, duties, and liabilities of the court of quarter sessions or justices of the borough, as in the case of the county are by this Act transferred to the county council, shall cease, and the county council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county (*x*).

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37. [*Application of Act to quarter sessions boroughs hereafter created.*]

38. [*Application of Act to smaller quarter sessions boroughs with population under ten thousand.*]

39. [*Application of Act to all boroughs with population under ten thousand.*]

Application of Act to Metropolis.

Application of Act to Metropolis as county of London.

40. In the application of this Act to the Metropolis, the following provisions shall have effect:—

(1) The Metropolis (*y*) shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county (*y*) of London.

(2) Such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey, and Kent, shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London (*z*); and it shall be lawful for Her Majesty the Queen to appoint a sheriff of that county, and to grant a commission of the peace and court of quarter sessions to that county; and, subject to the provisions of this Act, all enactments, laws, and usages with respect to counties in England and Wales, and to sheriffs, justices, and quarter sessions (*a*) shall, so far as circumstances admit, apply to the county of London:

(3) Provided that, for the purpose of the jurisdiction of the justices under such commission, and of such court, as well as other non-administrative purposes, the county of the City of London shall continue a separate county, but if and when the mayor, commonalty, and citizens of the City assent to jurisdiction being conferred therein on such justices and court may by commission under the great seal be made subject to the jurisdiction thereof.

(4) The number of the county councillors for the administrative county of London, shall be double the number of members which at the passing of this Act, the parliamentary boroughs in the Metropolis are authorised by law to return to serve in Parliament; and each such borough, or

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virtue of this, or any other Act, by the council of the borough, are transferred to the mayor, commonalty, and citizens of the City, acting by the Common Council. Sec. 41 (1), *post*. The remainder of the section does not affect London.

(*x*) **Section 36.** This sub-section applies to the City of London, (see sec. 41, *post*), but not to the remainder of the Metropolis.

(*y*) **Metropolis: administrative county.** These expressions are defined by sec. 100, *post*.

(*z*) **County of London.** The effect of this section is that, for non-administrative purposes, the City of London continues to be a county of itself, under the title of the County of the City of London, and the remainder of the Metropolis constitutes the county of London.

(*a*) **Quarter sessions.** See further as to holding courts of quarter sessions in London, sec. 42 (7), and note thereto, *post*.

51 & 52 Vict. c. 41.

if it is divided into divisions, each division thereof, shall be an electoral division for the purposes of this Act, and the number of county councillors elected for each such electoral division, shall be double the number of members of Parliament which such borough or division is at the passing of this Act entitled to return to serve in Parliament (*b*):

(5) Provided that the number of county aldermen in the administrative county of London, shall not exceed one-sixth of the whole number of county councillors (*c*).

(6) The provisions of this Act with respect to the powers, duties, and liabilities of county councils, and the transfer of property, debts, and liabilities of counties to county councils (*d*), shall apply to the administrative county of London in like manner, so nearly as circumstances admit, as if the quarter sessions, justices, and clerks of the peace of the counties of Middlesex, Surrey, and Kent had been, so far as regards the Metropolis, the quarter sessions, justices, and clerk of the peace for the administrative county of London:

(7) Provided that any property, debts, or liabilities of the county of Kent shall not, by reason only of this enactment, be vested in the County Council of London, but such property, debts, and liabilities, and also the property, debts, and liabilities of the counties of Middlesex and Surrey, shall be apportioned between the portions of those counties situate within the Metropolis and the portions situate outside the Metropolis in such manner as may be determined by agreement between the respective county councils, or in default of agreement by the commissioners under this Act (*e*), and the property, debts, and liabilities apportioned to the portions within the Metropolis shall be the property, debts, and liabilities of the whole of the administrative county of London.

(8) There shall also be transferred to the London County Council the powers, duties, and liabilities of the Metropolitan Board of Works (*f*), and after the appointed day (*g*) that Board shall cease to exist, and the property, debts, and liabilities thereof shall be transferred to the London County Council, and that council shall be in law the successors of the Metropolitan Board of Works.

(9) If the London County Council borrow for the purposes of this Act

(*b*) **Number of county councillors.** There are 57 parliamentary divisions in London which send one member each to Parliament (Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), sched. 6, part i.), and two therefore, to the County Council; besides the City, which sends two members to Parliament (*ib.* sec. 4), and four therefore to the County Council. Consequently there are 59 members of Parliament and 118 county councillors for London.

(*c*) **Number of county aldermen.** The number of county councillors being 118, the number of aldermen is 19, making a total of 137 members. In addition to these, the Council may elect a chairman from outside. See Municipal Corporations Act, 1882, sec. 15 (1), *post*.

(*d*) **Provisions of this Act.** See sec. 64, *post*.

(*e*) **Commissioners.** The commissioners under this Act were appointed by sec. 61, *post*. The London and Surrey County Councils settled by agreement their property, debts and liabilities under this section. As between the London and Kent County Councils they were adjusted by the commissioners by order dated May 21st, 1892, and as between the London and Middlesex County Councils, by order dated April 12th, 1892. See "Minutes and Evidence taken before the Commissioners under the Local Government Act, 1888." Published August 15th, 1892.

(*f*) **Metropolitan Board of Works.** For the powers, duties, and liabilities of the Metropolitan Board of Works, see Metropolis Management Act, 1855, and other Acts, *post*.

(*g*) **The appointed day** for the purpose of this sub-section was March 21st, 1889. Order of Local Government Board, March 19th, 1889.

they shall borrow in accordance with the provisions of the Acts relating to the Metropolitan Board of Works (*h*), but save as aforesaid part four of this Act shall apply to the London County Council when acting as successors of the Metropolitan Board of Works, and the costs incurred when so acting shall be paid out of the county fund, and the payment thereof shall be a general county purpose (*i*). 51 & 52 Vict. c. 41.

Position of City of London, and application of Highway Acts.

41.—(1) Of the powers, duties, and liabilities of the court of quarter sessions and justices of the City of London (*k*)—

(a) such of them as would, if the City were a quarter sessions borough, with a population exceeding ten thousand, be exercised by virtue of this or any other Act by the council of the borough, shall be transferred to the mayor, commonalty, and citizens of the City acting by the council (in this Act referred to as the common council) (*l*); and

(b) such of them as would, in the said case, be by virtue of this Act exercised and discharged by the county council shall cease, and the county council shall, subject to the provisions of this Act, have those powers, duties, and liabilities within the City of London in like manner as within the rest of the administrative county of London (*m*).

(2) The provisions of this Act with respect to the transfer to a county council (*n*), shall apply with the necessary modifications to such transfer to the common council and the common council shall be entitled to receive from the London County Council in respect of each pauper lunatic, the same amount as is required by this Act to be paid by any other county council to the council of a borough (*o*).

(3) Where at the passing of this Act the Metropolitan Board of Works or the quarter sessions of Middlesex are authorised to incur costs for any purpose, and the common council of the City are not liable to contribute to such costs (*p*), the parishes in the City of London shall not, save as in

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(*h*) **Borrowing.** This sub-section excludes the Metropolis from the provisions of secs. 69 and 70, *post*. For provisions regulating the borrowing of the Metropolitan Board of Works, and now of the London County Council, see *post*, vol. ii. tit. "*Loans*."

(*i*) **General county purpose.** For the meaning of this expression, see sec. 68 (2), *post*. The City is, however, not liable to contribute to certain of the costs of the County Council when acting as successors of the Metropolitan Board of Works (see sec. 41 (3)), which, therefore, are paid as a special county purpose. See sec. 68 (3), *post*.

(*k*) **Court of quarter sessions of the City of London**, i.e., the Court of the Mayor and Aldermen in the Inner Chamber. Sec. 100, *post*.

(*l*) **Transfer to Common Council.** See sec. 35, *ante*. The effect of these provisions was to transfer to the Common Council, instead of to the County Council, the powers of the justices, within the City, under the following Acts, viz., the Explosives Act, 1875 (see sec. 7 (b), *ante*); the Acts relating to pauper lunatic asylums (see sec. 3 (vi), *ante*); the Petroleum Acts, 1871—1881 (*post*, vol. ii.); the Reformatory and Industrial School Acts (see sec. 3 (vii), *ante*); and the Weights and Measures Act, 1878. See sec. 3 (xiii), *ante*.

(*m*) **Transfer to County Council.** See sec. 36, *ante*. The effect of this sub-section was to transfer to the County Council the powers, duties, and liabilities of the Court of the Mayor and Aldermen respecting music and dancing licences within the City, under the Disorderly Houses Act, 1751 (see sec. 3 (v), *ante*); and the powers of the justices of the City with respect to county bridges. See sec. 3 (viii), *ante*.

(*n*) **Provisions with respect to transfer.** See secs. 28 and 29, *ante*, and 78, *post*.

(*o*) **Payment in respect of pauper lunatic.** See sec. 24 (2) (g), *ante*.

(*p*) **City not liable to contribute.** The City was not liable, at the passing of this Act, to contribute to the costs of the Metropolitan Board of Works for the following purposes, viz.:—the Artizans and Labourers' Dwellings Act, now repealed and consolidated by the Housing of the Working Classes Act, 1890; the Explosives Act, 1875; the Infant Life Protection Act, 1872; the Metropolis Gas Act, 1860, as amended by subsequent Acts; the Metropolis Water Acts, 1852 and 1871; the Petroleum Acts, 1871—1881; the Sale of Gas Act, 1859; and the Tramways Act, 1870: as to all of which see *post*, vol. ii.;

51 & 52 Vict. c. 41.

this Act expressly mentioned, be liable to be assessed to county contributions in respect of costs incurred by the county council for such purpose, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the quarter sessions or justices of the City of London, which will be exercised and discharged by the London County Council (*q*).

41 & 42 Vict. c. 77.

(4) The provisions of the Highways and Locomotives (Amendment) Act, 1878 (*r*), with respect to main roads, as amended by this Act (*s*), shall extend to the Metropolis in like manner as if the expression "urban sanitary district" in that Act included, as respects the Metropolis, the City of London, and a parish in schedule A., and a district in schedule B. of the Metropolis Management Act, 1855 (*t*), as amended by subsequent Acts, and as if the commissioners of sewers (*u*), or vestry, or district board (as the case may be) were the urban sanitary authority: Provided that—

18 & 19 Vict. c. 120.

(a) in the City of London the common council shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making byelaws respecting locomotives, and authorising locomotives to be used on any road within the City, save that if any difference is made by such byelaws or authority between any main road maintained by the county council and the other roads in the City, such authority and byelaws shall require the approval of the county council; and

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the Slaughterhouses (Metrop.) Act, 1874, repealed and replaced by the Public Health (London) Act, 1891, *post*; and dangerous structures under the Metropolitan Building Act, 1855, repealed and replaced by the London Building Act, 1894, *post*.

The City was not liable to contribute to the costs incurred by the quarter sessions of Middlesex for the following purposes, viz.:—the appointment and disbursements of coroners under the Coroners Acts, 1844—1887; the Acts relating to pauper lunatic asylums, now repealed and consolidated by the Lunacy Acts, 1890 and 1891; the Reformatory and Industrial Schools Acts, 1866—1880; and the Weights and Measures Act, 1878. See these Acts, *post*, vol. ii.

(*q*) **Powers, &c., exercised by County Council.** See sub-section (1) (b), *supra*, and note thereto.

(*r*) **Highways and Locomotives (Amend.) Act, 1878.** *Post*, vol. ii. tit. "*Highways.*"

(*s*) **As amended by this Act.** See sec. 11, *ante*.

(*t*) **Met. Man. Act, 1855.** See the Act, *post*.

(*u*) **Commissioners of Sewers.** The Commissioners of Sewers of the City of London consist of the Lord Mayor, the Recorder, and the Common Sergeant of the City, and a number of commissioners appointed from time to time by the Common Council under the City of London Sewers Acts, 1848 and 1851 (11 & 12 Vict. ch. clxiii., and 14 & 15 Vict. ch. xci.). The construction, management, and control of all public sewers and drains except main sewers, the control of private drains, the control and regulation of the construction of buildings, the paving, cleansing, lighting, and improvement of streets, and the appointment of clerks, surveyors, &c., and collectors within the City, are vested in them. They are empowered to levy a sewers rate and a consolidated rate (*ib.*); and by the Commissioners of Sewers of the City of London Act, 1875 (38 Vict. ch. iv.), they are empowered to borrow money on the consolidated rate, and to issue debenture stock. The commissioners are the local authority for the execution within the City of the Housing of the Working Classes Act, 1890, *post*, vol. ii. They are the burial board for the City under the Burial Act, 1852 (15 & 16 Vict. c. 85), and the City of London Burial Act, 1857 (20 & 21 Vict. c. 35). The commissioners are the sanitary authority under the Factory and Workshop Act, 1878 (41 Vict. c. 16), sec. 96; the Alkali, &c., Works Regulation Act, 1881 (44 & 45 Vict. c. 37), sec. 27; and the Public Health (London) Act, *post*. They are also the local authority for the appointment of analysts under the Sale of Food and Drugs Acts, 1875 and 1879, *post*, vol. ii.; for the purposes of the Factory and Workshop Act, 1883 (46 & 47 Vict. c. 53), sec. 18; and for certain purposes under the London Building Act, 1894, *post*. For the area of their jurisdiction see note (*a*), *post*, p. 210. At the time of going to press, the City of London Sewers Bill, 1897, had already passed the House of Commons, providing for the transfer of the powers, duties, and liabilities of the Commissioners to the Common Council.

(b) the common council in the City of London, and in any other part of the Metropolis, the vestry, or district board, shall be deemed to be a district council and an urban authority within the meaning of the provisions of this Act with respect to main roads (*x*), and may accordingly claim to retain the power of maintaining and repairing a main road, and in such case shall have all such powers and duties of maintaining, repairing, improving and enlarging, and otherwise dealing with the main road as they would have if it were an ordinary highway repairable by them, and such powers and duties shall in the City of London be discharged by the commissioners of sewers. 51 & 52 Vict. c. 41.

(5) The payment of the costs of assizes and sessions (*y*) shall be a general county purpose for which the parishes in the City may be assessed to county contributions, and all such costs of prosecutions in the City as are by law payable out of the county rate shall be paid out of the county fund.

(6) The county councillors elected for the City, shall not act or vote (*z*) in respect of any question arising before the county council as regards matters involving expenditure on account of which the parishes in the City are not for the time being liable to be assessed equally with the rest of the administrative county to county contributions.

(7) The London County Council, and the common council of the City of London may agree for the cessation in whole or in part of any exemption under this section from assessment, in consideration either of payment by the county council of a capital sum, or of an annual payment, or of a transfer of property or liabilities, or of the county council undertaking, in substitution for the common council, any powers or duties, or partly for one consideration and partly for another, or in any other manner, according as may be determined.

(8) The sheriffs of the City of London shall not have any authority except in the City (*a*).

Arrangements for paid chairman and sitting of quarter sessions for London.

42.—(1) If the London County Council petitions Her Majesty the Queen in that behalf, it shall be lawful for Her Majesty from time to time to appoint a barrister of not less than ten years' standing to be paid chairman or deputy chairman, or one of the paid deputy chairmen, as the case may be, of the quarter sessions for the county of London (*b*).

(2) Any person so appointed shall hold office during good behaviour,

(*x*) **Main roads.** See sec. 11, *ante*.

(*y*) **Assizes and sessions.** The expression "assizes" includes the Central Criminal Court. Sec. 100, *post*, and see that section to as what the "costs of assizes and of quarter and petty sessions" include. See further as to the costs of sessions, secs. 66 and 67, *post*.

(*z*) **Act or vote.** Notwithstanding anything contained in this sub-section, "it shall be lawful for the chairman, vice-chairman, or deputy-chairman of the Council, or any councillor acting as chairman in their absence, to act in the capacity of chairman on any question arising before the Council, although they may be councillors elected for the City of London, and although the question may regard matters involving expenditure in respect of which the parishes in the City are not for the time being liable to be assessed equally with the rest of the county to county contributions; but this section shall not be construed to confer any power of voting." London Council (General Powers) Act, 1890 (53 & 54 Vict. ch. ccxliii.), sec. 23.

(*a*) **Sheriffs.** The sheriff for the county of London is appointed by the Queen. Sec. 40 (2).

(*b*) **Chairman, &c., of quarter sessions.** As to the pension for the chairman and deputy chairman, the appointment of deputies, the appointment of their clerks, and the payments by the County Council, see the Quarter Sessions (London) Act, 1896, *post*, vol. ii. tit. "*Quarter Sessions*."

51 & 52 Vict. c. 41.

and shall by virtue of his office be a justice of the peace for the county of London.

(3) There shall be paid to him out of the county fund as a general county purpose such yearly salary, not exceeding that stated in the petition in consequence of which the appointment was made, as Her Majesty directs.

(4) Such chairman or deputy chairman shall not, during his office, be eligible to serve in Parliament, and shall not during his continuance in office practise as a barrister.

(5) Where there is any such paid chairman or deputy chairman of the quarter sessions, the court may be held before such chairman or deputy chairman alone.

(6) Separate courts of quarter sessions may be held at different parts of the county of London at the same time if so directed by the county council with the approval of a Secretary of State, and every court of general sessions of the peace for the county of London and every adjournment thereof shall have the same jurisdiction in all respects, including the power of hearing and determining appeals, as if such court were quarter sessions.

(7) The London County Council may from time to time submit to a Secretary of State a scheme for regulating the holding of courts of quarter sessions in London either at any one place or at different places, and in the latter case either at the same time or at different times, and for determining the legal character of each sessions so held, that is to say, whether quarter, general, original, or adjourned sessions, or otherwise, and for making such regulations respecting committals for trial, recognisances, depositions, and other matters as are necessary or proper for giving effect to the scheme, and such scheme, when approved by a Secretary of State, shall be published in the London Gazette, and thereupon shall have effect as if it were enacted in this Act (*c*).

(8) Until the quarter sessions for the county of London constitute special sessional divisions (*d*), every petty sessional division of the counties of Middlesex, Surrey, and Kent existing at the appointed day, or so much of such division as is situate in the county of London, shall form a special or petty sessional division of the county of London.

(9) [*Petty sessional divisions of the counties of Middlesex, Surrey, and Kent.*]

32 & 23 Vict. c. 67.

(10) The quarter sessions for the county of London shall be substituted for the general assessment sessions under the Valuation (Metropolis) Act, 1869 (*e*), and have all the jurisdiction vested in those sessions, and shall exercise the same within the same area. Upon the hearing of any appeals in relation to property in the City of London, such two members of the court of quarter sessions of the City of London (*f*) as may be appointed by that court for the purpose, shall be entitled to attend and sit as members of the quarter sessions for the county of London.

(*c*) **Scheme for holding quarter sessions.** See order of the Home Secretary dated March 24th, 1892 (*London Gazette*, March 29th, 1892, p. 1851), approving scheme of the County Council for regulating the holding of quarter sessions in London, *post*, vol. ii. tit. "*Quarter Sessions*."

(*d*) **Petty sessional divisions.** The power of quarter sessions to divide their county into petty sessional divisions is contained in the Division of Counties Act, 1828 (9 Geo. 4, c. 43), as amended by the Petty Sessional Divisions Acts, 1836 (6 & 7 Will. 4, c. 12) and 1859 (22 & 23 Vict. c. 65).

(*e*) **Valuation (Metropolis) Act, 1869.** See sec. 23 *et seq.*, *post*, vol. ii. tit. "*Rating*."

(*f*) **Quarter sessions of the City of London** means the Court of the Mayor and Aldermen in the Inner Chamber. Sec. 100, *post*.

(11) [*Sessions of the peace for the county of Middlesex.*]

(12) [*Quarter sessions for the counties of Middlesex, Surrey, and Kent. No jurors to be summoned for such sessions from within the county of London.*]

51 & 52 Vict. c. 41.

(13) Nothing in this Act shall alter the powers or duties of the justices, quarter sessions (*g*), recorder, or common serjeant of the City of London, further or otherwise than is expressly provided (*h*), or than the powers and duties of the justices or quarter sessions of any county are altered (*i*).

(14) Provided that from and after the appointed day the rights claimed by the court of common council to appoint to the offices of common serjeant, and judge of the City of London Court shall cease, and in any future vacancy in each of the said offices, it shall be lawful for Her Majesty the Queen to appoint a duly qualified barrister to be such common serjeant, or judge; and from and after the next vacancy no recorder shall exercise any judicial functions unless he is appointed by Her Majesty to exercise such functions.

Grant by London County Council to poor law unions.

43.—(1) In the administrative county of London the county council:—

(a) shall pay to the guardians for every poor law union wholly in the county such sums as the Local Government Board from time to time certify to be due from the said council in substitution for the local grants (*k*) towards the remuneration of poor law medical officers, and towards the cost of drugs and medical appliances; and

(b) shall grant to the guardians of every poor law union wholly in their county an amount equal to fourpence a day per head for every indoor pauper maintained in that union (*l*), and such grant, during the five local financial years beginning on the appointed day, shall be reckoned according to the average number of indoor paupers so maintained during the five financial years ending on the twenty-fifth day of March next before the passing of this Act, and shall, after the end of the said five local financial years, unless Parliament otherwise determine, continue to be reckoned in accordance with the same average number; and

(c) shall pay to the guardians of every poor law union, a portion of which only is situate in their county (*m*), such proportion of the annual sum which is, under the other provisions of this Act (*n*), payable by the county council of a county to the guardians of that union, as the rateable value of the portion within the administrative county of London bears to the rest of the union.

(2) For the purposes of this section the expression "indoor pauper" includes all paupers maintained in a workhouse, and all paupers maintained in any district school, separate school, separate infirmary, sick asylum, hospital for infectious diseases, or institution for the deaf, dumb, blind,

(*g*) **Quarter sessions of the City of London.** See note (*f*) on page 32.

(*h*) **Otherwise than expressly provided.** See sec. 41 (1), *ante*.

(*i*) **Powers of justices altered.** See secs. 3, 4, and 7, *ante*.

(*k*) **In substitution for local grants.** As to other payments to guardians in substitution for local grants, see sec. 24 (2), *ante*.

(*l*) **Grant to guardians.** This is in addition to any payment made to the guardians out of the metropolitan common poor fund. See sec. 94, *post*.

(*m*) **Portion only of union in the county.** Croydon Union is the only union a portion of which only is situate in the Metropolis. That portion is the hamlet of Penge. See Statement of Poor Law Unions presented to Parliament in 1887, C. 5191.

(*n*) **Other provisions of this Act.** See sec. 26, *ante*.

51 & 52 Vict. c. 41.

or idiots, or in any certified school under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her Majesty, chapter forty-three (*o*), and includes any children boarded out, whether within or without the limits of the union, and in the metropolitan asylum district (*p*) includes all inmates of any asylum for imbeciles provided by the managers of that district, but excludes paupers relieved in casual wards, and such number of indoor paupers in a workhouse or in a district or separate school or in a separate infirmary or asylum, as exceeded the number prescribed by the Local Government Board for that workhouse, school, infirmary or asylum, and also excludes paupers maintained for part only of a day: Provided always, that any paupers maintained under any contract or agreement in a workhouse other than that of the union to which they are chargeable, shall be included only in the number of indoor paupers of the union to which they are so chargeable.

(3) The average number of paupers shall be estimated in such manner as the Local Government Board direct, and shall be certified by the Board. The Board may, if they think proper, vary their certificate, but unless it is so varied, their certificate shall be conclusive.

Transfer of duties under 32 & 33 Vict. c. 67, of clerk of metropolitan asylums managers.

44. On and after the appointed day all powers and duties of the clerk to the managers of the metropolitan asylums district under the Valuation (Metropolis) Act, 1869 (*q*), shall be transferred to the clerk of the County Council of London, and the said Act shall be construed as if the county council were substituted therein for the managers of the metropolitan asylums district.

Application of Act to Special Counties and to Liberties.

45. [*Slaughter-houses. Repealed and replaced by Public Health (London) Act, 1891, post.*]

46. [*Application of Act to certain special counties beyond the Metropolis. Right of citizens of London to elect Sheriff of Middlesex to cease.*]

47. [*Saving for Manchester Assize Courts Act, 1858, 21 & 22 Vict. c. xxiv.*]

Merger of liberties in county.

48.—(1) For all purposes of this Act, every liberty (*r*) and franchise of a

(*o*) **25 & 26 Vict. c. 43**, i.e., the Poor Law (Certified Schools) Act, 1862, which authorises the guardians to maintain pauper children at certain schools which are certified by the Local Government Board.

(*p*) **Metropolitan asylums district.** This district is constituted under the order of the Poor Law Board dated May 15th, 1867, as amended by the orders of the Local Government Board of February 24th, 1871, and September 3rd, 1886, made under the powers conferred by the Metropolitan Poor Act, 1867 (30 Vict. c. 6), secs. 5 and 6, as amended by the Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), sec. 1, and the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), sec. 40. It was formed "for the reception and relief of the classes of poor persons chargeable to some union or parish in the said district who may be infected with or suffering from fever, or the disease of smallpox, or may be insane." With the exception of the hamlet of Penge, it extends to the whole of the Metropolis, and is managed by a board of 72 managers, termed the Metropolitan Asylums Managers. Of these managers 54 are elected triennially by the various boards of guardians in the Metropolis, and 18 are nominated by the Local Government Board.

(*q*) **Valuation (Metropolis) Act, 1869.** See secs. 14, 16, 17, 41, 42 (8) and 42 (11) of this Act, *post*, vol. ii. tit. "*Rating*."

(*r*) **Liberty.** The liberty of the Tower of London is the only liberty in the Metropolis affected by this section. By Order in Council dated April 30th, 1894 (*London Gazette*, May 11th, 1894, p. 2669), it was ordered "that the exclusive jurisdiction of the Tower shall cease, and that the liberty of the Tower shall be united with, and form part of the county of London, for all purposes for which the justices of the liberty have hitherto exercised separate jurisdiction."

county, wholly or partly exempt from contribution to the county rate, shall, save as may be otherwise provided by or in pursuance of this Act, form part of the county of which it forms part for the purposes of parliamentary elections. 51 & 52 Vict. c. 41.

(2) The provisions of this Act with respect to the transfer to the county council of the powers, duties, and liabilities of the quarter sessions and justices of a county, and of their property, debts, and liabilities (*s*), whether vested in or attaching to the clerk of the peace or any justice or justices or otherwise on behalf of the county, shall apply to every such liberty and franchise as above mentioned in like manner in all respects as if they were herein re-enacted and in terms made applicable to such liberty and franchise; and the county council shall have and exercise in every such liberty and franchise the powers and duties transferred to them by this Act from the quarter sessions and justices of the county;

(3) [*Police. Inapplicable to London. See sec.* 93, *post.*]

(4) [*Cinque Ports. Inapplicable to London.*]

49. [*Power to Local Government Board to make provisional order for Scilly Islands.*]

PART III.—BOUNDARIES.

50. [*Boundary of county for first election beyond Metropolis.*]

51. [*Directions for constitution of electoral divisions. Inapplicable to London. See sec.* 40 (4), *ante.*]

52. [*Provisional order as respects boroughs and urban sanitary districts in same area. Inapplicable to London.*]

53. [*Consideration of alterations of boundaries of counties beyond Metropolis by county councils.*]

54.—(1) Whenever it is represented by the council of any county *or borough* (*t*) to the Local Government Board— Future alterations of boundaries.

(a) that the alteration of the boundary of any county (*u*) *or borough* (*t*) is desirable; or

(b) that the union, for all or any of the purposes of this Act, of a county borough with a county is desirable; or

(c) that the union, for all or any of the purposes of this Act, of any counties or boroughs or the division of any county is desirable; or

(d) *that it is desirable to constitute any borough having a population of not less than fifty thousand into a county borough* (*t*); *or*

(e) that the alteration of the boundary of any electoral division of a county, or of the number of county councillors and electoral divisions in a county, is desirable; or

(f) that the alteration of any area of local government partly situate in their county *or borough* (*t*) is desirable;

the Local Government Board shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made

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(*s*) **Transfer of powers, &c.** See secs. 3, 4, 7, 8, 28, 29, 40 (6), *ante*, and secs. 64 and 78, *post.*

(*t*) **Borough**, i.e., municipal borough. Sec. 100, *post.* The words in italics do not, therefore, apply to London.

(*u*) **Alteration of boundary.** See sec. 60, *post.*

51 & 52 Vict. c. 41.

a local inquiry (*x*), and may make an order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division.

(2) Provided that in default of such representation by the council of any county *or borough* (*y*) before the first day of November one thousand eight hundred and eighty-nine, the Local Government Board may cause such local inquiry to be made, and thereupon may make such order as they may deem expedient.

(3) Provided that if the order alters the boundary of a county *or borough* (*y*), or provides for the union of a county borough with a county, or for the union of any counties or boroughs, or for the division of any county, *or for constituting a borough into a county borough* (*y*), it shall be provisional only, and shall not have effect unless confirmed by Parliament.

(4) [*Alteration of boundary of a borough* (*y*).]

(5) At any time before the appointed day, the Local Government Board may make an order in pursuance of this section without any such representation as in this section mentioned.

55. [*Contents of provisional order amalgamating two county boroughs.*]

Procedure for charter of new borough.

56. Where a petition is presented to Her Majesty the Queen by the inhabitant householders of any town or towns or district, in pursuance of the Municipal Corporations Act, 1882, for the grant of a charter of incorporation, notice of such petition shall be given to the county council of the county in which such town, towns, or district is or are situate, and shall also be sent to the Local Government Board, and the Privy Council shall consider any representations made by such county council or the Local Government Board, together with the petition for such charter.

Future alteration of county districts and parishes and wards and future establishment of urban districts.

57.—(1) Whenever a county council is satisfied that a primâ facie case is made out (*z*) . . . as respects any parish, for a proposal for all or any of the following things; that is to say—

(a) the alteration or definition of the boundary thereof;

(b) the division thereof or the union thereof with any other such . . . parish or parishes, or the transfer of part of a parish to another parish (*z*) . . .

the county council may cause such inquiry to be made (*a*) in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government department as may be prescribed (*b*), and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner (*b*), and otherwise as the county council think fit (*z*) . . .

(*x*) **Local inquiry.** See sec. 87, *post*.

(*y*) **Borough.** See note (*t*) on page 35.

(*z*) **Section 57.** The words omitted from this section do not affect London.

(*a*) **Inquiry by County Council.** *Quære* whether prohibition will lie to prohibit a county council from holding an inquiry or making an order under this section. *Reg.* v. *London County Council*, *post*, p. 39.

(*b*) **Prescribed.** Regulations as to inquiries and notice under this section prescribed by the Local Government Board are dated September 14th, 1889, and are published in the nineteenth annual report of the Local Government Board, 1889—1890.

(3) In any other case the order shall be submitted to the Local Government Board; and if within *three months* after (*c*) such notice of the provisions of the order as the Local Government Board determine to be the first notice (*d*) . . . or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry (*e*), and determine whether the order is to be confirmed or not. 51 & 52 Vict. c. 41.

(4) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order (*f*).

(5) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

(6) An order under this section (*g*), when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

58. The Local Government Board, where it appears expedient so to do with reference to any poor law union which is situate in more than one county instead of dissolving the union (*h*) may by order provide that the same shall continue to be one union for the purposes of indoor paupers or any of those purposes, and shall be divided into two or more poor law unions for the purpose of outdoor relief, and may by the order make such provisions as seem expedient for determining all other matters in relation to which such union is to be one union or two or more unions. Additional power of Local Government Board as to unions.

59.—(1) A scheme (*i*) or order under this Act may make such administrative and judicial arrangements incidental to or consequential on any alteration of boundaries, authorities, or other matters made by the scheme or order as may seem expedient. Supplemental provisions as to alteration of areas.

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned (*k*), form part of that

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(*c*) **Three months.** Now six weeks. Local Government Act, 1894, sec. 41, *post*, p. 535.

(*d*) **Section 57.** See note (*z*) on page 36.

(*e*) **Local inquiry.** See sec. 87, *post*.

(*f*) **Confirmation of order.** No objection to the legality of an order under this section can be entertained in any legal proceedings whatever after the expiration of six months from its confirmation by the Local Government Board. Local Government Act, 1894, sec. 42, *post*, p. 535.

(*g*) **Order under this section.** An order under this section may amend any local and personal Act. Sec. 59 (6), *post*.

(*h*) **Dissolving the union.** The Poor Law Amendment Act, 1834 (4 & 5 Will. 4, c. 76), provided for the formation of parishes into unions for poor law administration, and the addition to, separation from, and dissolution of any union by the Poor Law Commissioners, whose powers are now exercised by the Local Government Board by virtue of the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), sec. 2.

(*i*) **Scheme.** The only scheme affecting London provided for by this Act relates to the regulation of the holding of quarter sessions. See sec. 42 (7), *ante*.

(*k*) **Subject as in this Act mentioned.** See sec. 40 (3), *ante*, which enacts that the City of London shall continue a separate county for non-administrative purposes.

51 & 52 Vict. c. 41.

county for all purposes, whether sheriff (*l*), lieutenant (*m*), custos rotulorum (*n*), justices, militia (*o*), coroner (*p*), or other; Provided that—

(a) [*Special counties, cities and boroughs. London not affected.*]

(c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rent-charge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(3) For the purposes of parliamentary elections, and of the registration of voters for such elections, the sheriff, clerk of the peace, and council of the county in which any place is comprised at the passing of this Act for the purpose of parliamentary elections shall, save as otherwise provided by the scheme or order, or by the County Electors Act, 1888 (*q*), or this Act (*r*), continue to have the same powers, duties, and liabilities as they would have had if no alteration of boundary had taken place.

51 & 52 Vict. c. 10.

(4) Any scheme or order made in pursuance of this Act may, so far as may seem necessary or proper for the purposes of the scheme or order, provide for all or any of the following matters, that is to say,—

(a) may provide for the abolition, restriction, or establishment, or extension of the jurisdiction of any local authority in or over any part of the area affected by the scheme or order, and for the adjustment or alteration of the boundaries of such area, and for the constitution of the local authorities therein, and may deal with the powers and duties of any council, local authorities, quarter sessions, justices of the peace, coroners, sheriff, lieutenant, custos rotulorum, clerk of the peace, and other officer therein, and with the costs of any such authorities, sessions, persons, or officers as aforesaid, and may determine the status of any such area as a component part of any larger area, and provide for the election of representatives in such area, and may extend to any altered area the provisions of any local Act which were previously in force in a portion of the area; and

(b) may make temporary provision for meeting the debts and liabilities of the various authorities affected by the scheme or order, for the management of their property, and for regulating the duties, position, and remuneration of officers affected by the scheme or order,

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(*l*) **Sheriff.** As to the sheriff of the county of London, see sec. 40 (2), and of the City of London, sec. 41 (8), *ante*.

(*m*) **Lieutenant.** The lieutenants for the several counties in the United Kingdom are appointed by the Crown. See the Militia Act, 1882 (45 & 46 Vict. c. 49), sec. 29. The Tower Hamlets was, for the purpose of the Act, a separate county (*ib.* sec. 49 (2)), as is also the City of London, where the Commissioners of Lieutenancy are the lieutenant of the county. *Ib.* sec. 50. The City continues to be a separate county for the purpose of the Act, but the Tower Hamlets now forms part of the county of London. See sec. 91, *post*.

(*n*) **Custos rotulorum.** The custos rotulorum is the principal justice of the peace of the county, and is appointed by the royal sign manual. He was, up to the passing of this Act, the keeper of the rolls or records of the county, of the sessions of the peace, and of the commission of the peace itself (I. & H. Black. Com.). In London the clerk of the peace now has charge of the records and documents of the sessions and justices out of session, and the clerk of the county council has charge of the other documents of the county. Sec. 83 (11) (a), *post*.

(*o*) **Militia.** Every militiaman is enlisted to serve for some county. Militia Act, 1882 (45 & 46 Vict. c. 49), sec. 8 (2).

(*p*) **Coroner.** See sec. 3 (xi), and sec. 5, *ante*.

(*q*) **County Electors Act, 1888.** See sec. 4 (2) (f), and sec. 7, *post*, vol. ii.

(*r*) **Or this Act.** See sec. 92 (2) and (3), *post*.

and applying to them the provisions of this Act as to existing officers (*s*); and 51 & 52 Vict. c. 41.

(c) may provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the scheme or order, and for determining questions arising from such transfer; and

(d) may provide for all matters which appear necessary or proper for bringing into operation and giving full effect to the scheme or order; and

(e) may adjust any property, debts, and liabilities affected by the scheme or order (*t*).

(5) Where an alteration of boundaries of a county is made by this Act (*u*) an order for any of the above-mentioned matters may, if it appears to the Local Government Board desirable, be made by that Board, but such order, if petitioned against by any council, sessions, or local authority affected thereby, within three months after notice of such order is given in accordance with this Act, shall be provisional only, unless the petition is withdrawn or the order is confirmed by Parliament.

(6) A scheme or order may be made for amending any scheme or order previously made in pursuance of this Act, and may be made by the same authority and after the same procedure as the original scheme or order. Where a provision of this Act respecting a scheme or order requires the scheme or order to be laid before Parliament (*x*), or to be confirmed by Parliament (*y*), either in every case or if it is petitioned against, such scheme or order may amend any local and personal Act (*z*).

General provision as to alteration of boundaries.

60. In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government.

61. [*Appointment of certain commissioners for settlement and determination of matters referred to them; their award to be final; and their powers to cease on the last day of December*, 1890. *Spent. For the matters affecting London which were referred to the commissioners, see sec.* 40 (7) *and note thereto, ante, and sec.* 64 (1) (c), *post.*]

Adjustment of property and liabilities.

62.—(1) Any councils and other authorities affected by this Act or by any scheme, order, or other thing made or done in pursuance of this Act, may from time to time make agreements for the purpose of adjusting any

(*s*) **Existing officers.** See secs. 118—120, *post.*

(*t*) **Adjust property, debts, &c.** Where an order of a county council made under sec. 57 (1) (c), *ante*, did not provide a mode of adjustment of the property, debts, and liabilities affected by the order, it was held that the appointment by the Local Government Board of an arbitrator for the purpose, under sec. 62 (2), *post*, was valid. *Sowerby Urban District Council and the Mytholmroyd Urban District Council, In re Arbitration between*, 74 L. T. (N. S.) 313; 12 T. L. R. 300. A provision in the order that differences may be adjusted by the county council is not sufficient. The mode of adjustment contemplated by this sub-section is adjustment by the order or scheme itself. *Ib.*

(*u*) **By this Act.** The boundaries of the counties of Middlesex, Surrey, and Kent, were altered by sec. 40 (2), *ante.*

(*x*) **Laid before Parliament.** See sec. 57 (6).

(*y*) **Confirmed by Parliament.** See secs. 4, 10, 14, 54, 59 (5), *ante*, and sec. 87, *post*, as to orders which require to be confirmed by Parliament.

(*z*) **Local or personal Act.** The power to amend any personal or local Act extends to the amendment of any portion of an Act, whether public and general, or local and personal, provided the portion amended is of a local and personal nature. *Reg.* v. *London County Council* (1893), 2 Q. B. 454; 63 L. J. Q. B. 4.

51 & 52 Vict. c. 41.

property, income, debts, liabilities, and expenses, so far as affected by this Act or such scheme, order, or thing, of the parties to the agreement, and the agreement and any other agreement authorised by this Act to be made for the purpose of the adjustment of any property, debts, liabilities, or financial relations, may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred or retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the commissioners under this Act or the Local Government Board.

(2) In default of an agreement as to any matter requiring adjustment for the purpose of this Act, or any matter which, in case of difference, is to be referred to arbitration, then, if no other mode of making such adjustment or determining such difference (*a*) is provided by this Act, such adjustment or difference may be made or determined by an arbitrator appointed by the parties, or in case of difference as to the appointment, appointed by the Local Government Board.

8 & 9 Vict. c. 18.

(3) An arbitrator appointed under this Act shall be deemed to be an arbitrator within the meaning of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and, further, the arbitrator may state a special case, and notwithstanding anything in the said Acts, shall determine the amount of the costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

(4) Any award or order made by the commissioners or any arbitrator under this Act may provide for any matter for which an agreement might have provided.

(5) Any sum required to be paid for the purpose of adjustment, or of any award or order made by the commissioners, or an arbitrator under this Act, may be paid out of the county *or borough* fund or out of such other special fund as the council, with the approval of the commissioners under this Act or of the Local Government Board, may direct.

(6) *The payment of any capital sum required to be paid for the purposes of the adjustment or of an agreement under this Act, or of any award or order made upon any arbitration under this Act, shall be a purpose for which a council may borrow under this Act, or in the case of a borough council, under the Municipal Corporations Act*, 1882, *or any local Act, and such sum may be borrowed on the security of all or any of the funds, rates, and revenues of the council, and either by the creation of stock or in any other manner in which they are for the time being authorised to borrow, and such*

(*a*) **Other mode of adjustment, &c.** A provision in an order of a county council under sec. 57, *ante*, that differences arising out of the order may be adjusted by the county council is not another mode of adjustment within the meaning of this section. *Sowerby Urban District Council and Mytholmroyd Urban District Council, In re Arbitration between, ante*, p. 39. In a case stated under sec. 29, *ante*, for the determination of a question as to the transfer of powers, the High Court has no jurisdiction to decide questions of adjustment of liabilities under the present section. *Salop County Council, In re, ante*, p. 25.

sum may be borrowed without the consent of the Treasury or any other authority, so that it be repaid within such period as the Local Government Board may sanction, by such method as is mentioned in part four of this Act for paying off a loan, or, if the sum is raised by stock under a local Act, by such method as is directed by that Act (*b*). 51 & 52 Vict. c. 41.

(7) Any capital sum paid to any council for the purpose of any adjustment, or in pursuance of any order or award of an arbitrator under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

Arbitration by Local Government Board. 31 & 32 Vict. c. 119.

63. Where the Local Government Board *are required in pursuance of this Act to decide* (*c*) any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868 (*d*), respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act.

PART IV.—FINANCE.

Property Funds and Costs of County Council.

Transfer of county property and liabilities.

64.—(1) On and after the appointed day all property (*e*) of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed (*f*), so far as those purposes are not modified by this Act. Provided that—

(*b*) **Borrowing.** The borrowing powers of the London County Council are defined and restricted by sec. 40 (9), *ante*.

(*c*) **Are required in pursuance of this Act to decide.** For these words, the words "determine as arbitrators" are substituted by the Local Government (Determination of Differences) Act, 1896 (59 Vict. c. 9). Section 19 of the Arbitration Act, 1889, (52 & 53 Vict. c. 49) applies to an arbitrator appointed by the Local Government Board under this section, and such arbitrator can be ordered by the High Court to state, in the form of a special case, for the opinion of the Court, any question of law arising in the course of the reference. *Kent County Council and Sandgate Local Board, In re* (1895), 2 Q. B. 43; 64 L. J. Q. B. 502.

(*d*) **Regulations of Railways Act, 1868.** Secs. 30 and 31 empower the Board of Trade to appoint an arbitrator to act for them, instead of making any award or deciding any difference themselves, and to fix the remuneration of any such arbitrator. Sec. 32 applies secs. 18 to 29 inclusive of the Railway Companies Arbitration Act, 1859 (22 & 23 Vict. c. 29), to an arbitrator so appointed. These last-mentioned sections empower the arbitrator to call for the production of any document or evidence in the possession of the companies concerned, and make provisions regulating the procedure, costs, &c.

(*e*) **Property** is defined by sec. 100, *post*.

(*f*) **Subject to the same covenants, conditions, &c.** Where a liability of the justices incurred under the Contagious Diseases (Animals) Act, 1869, was transferred to a county council by virtue of this section and sec. 3 (xiii), *ante*, it was held that as the remedy against the justices was by mandamus, the county council were not liable to be sued in respect of that liability, and any right against them must be enforced by mandamus. *Salford (Mayor)* v. *Lancashire County Council*, 25 Q. B. D. 384; 59 L. J. Q. B. 576.

51 & 52 Vict. c. 41.

(a) the existing records of or in the custody of the court of quarter sessions shall, subject to any order of that court, remain in the same custody in which they would have been if this Act had not passed; and

(b) where any property belongs to a charity, nothing in this Act shall affect the trust of such charity, and until otherwise directed by the the Charity Commissioners for England and Wales, the trustees or managers of the charity shall be appointed in like manner as if this Act had not passed; and

(c) the justices of any county may retain any pictures, chattels, or property on the ground that the same have been presented to them or purchased out of their own funds or otherwise belong to them, and are not held for public purposes of the county, and any difference arising between the county council and the justices with respect to any such retention shall be referred to and determined by the commissioners under this Act.

(2) On and after the appointed day all debts and liabilities of the quarter sessions, or of the clerk of the peace, or any justice or justices, or treasurer, or commissioners, incurred for county purposes, shall become debts and liabilities of the county council, and shall, subject to the provisions of this Act, be defrayed by them out of the like property and funds out of which they would have been defrayed if this Act had not passed.

(3) The county council shall have full power to manage, alter, and enlarge, and, with the consent of the Local Government Board, to alienate any land or buildings transferred by this section, or otherwise vested in the council, but shall provide such accommodation and rooms, and such furniture, books, and other things as may from time to time be determined by the standing joint committee of quarter sessions and the county council, to be necessary or proper for the due transaction of the business, and convenient keeping of the records and documents, of the quarter sessions and justices out of sessions, or of any committee of such quarter sessions or justices.

(4), (5) and (6) [*Application of section to Sussex, Suffolk, York, Lincoln, Peterborough, and Norfolk.*]

Power to acquire lands.

65.—(1) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.

(2) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875 (*g*), shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such

(*g*) **Public Health Act, 1875.** Secs. 176, 177 and 178 are set out *post*, vol. ii. tit. "*Housing of the Working Classes.*"

manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council. 51 & 52 Vict. c. 41.

Costs of justices to be payable out of county fund.

66. All costs incurred by the quarter sessions or the justices out of session of a county, and all costs incurred by any justice, *police officer, or constable* (*h*), in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, *police officer, or constable* (*h*) shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly.

Adjustment of law as respects costs ordered by quarter sessions or justices to be paid.

67. Any order of a court of quarter sessions, or of any justices or justice out of session, for the payment by the county treasurer of costs in criminal proceedings (*i*) or of costs under the Act of the forty-eighth year of the reign of King George the Third, chapter seventy-five (*k*), shall be obeyed by the county treasurer in like manner as heretofore, and the county council shall cause the treasurer, or some other person on his behalf, to attend at every court of quarter sessions for the purpose of paying such sums as may be ordered by the court to be so paid.

Funds of county council.

68.—(1) All receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund.

(2) In this Act the expression "general county purposes" means all purposes declared by this or any other Act to be general county purposes, and all purposes for contributions to which the county council are for the time being authorised by law to assess the whole area of their administrative county, and the expression "general county account" means the account of the county fund to which the contributions so raised are carried, and any costs incurred for a general county purpose shall be general expenses, and all costs incurred by the county council in the execution of their duties which are not by law made special expenses shall be general expenses.

(3) In this Act the expression "special county purposes" means any purposes from contribution to which any portion of the county is for the time being exempt (*l*), and also includes any purposes where the expenditure involved is by law restricted to a hundred, division, or other limited part of the county, and the expression "special county account" means

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(*h*) **Police officer or constable.** This section does not apply to police officers or constables in London. See sec. 93 (1), *post*.

(*i*) **Costs in criminal proceedings.** The courts of quarter sessions are empowered to order the payment by the county treasurer of the expenses of the prosecutor and his witnesses in all cases of felony, by the Criminal Law Act, 1826 (7 Geo. 4, c. 64), sec. 22, and also in cases of certain misdemeanours by sec. 23 of that Act, and under numerous subsequent Acts. The justices out of session may order the costs of the prosecution to be paid by the county treasurer in all prosecutions for indictable offences dealt with summarily in pursuance of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), sec. 28, and in certain cases under other Acts.

(*k*) **48 Geo. 3, c. 75,** i.e., the Burial of Drowned Persons Act, 1808, as amended by the Burial of Drowned Persons Act, 1886, *post*, vol. ii. tit. "*Burials*."

(*l*) **Portion exempt.** The City of London is exempt from contributing to certain county purposes. See sec. 41 (3), and note thereto, *ante*.

51 & 52 Vict. c. 41.

any account of the county fund to which contributions for special county purposes are carried, and any costs incurred for a special county purpose shall be special expenses.

(4) If the moneys standing to the general county account of the county fund are insufficient to meet the expenditure for general county purposes, county contributions (*m*) may be levied to meet the deficiency on the whole administrative county, and shall be assessed on all the parishes in the county.

(5) If the moneys standing to any special county account of the county fund are insufficient to meet the expenditure for the special county purposes chargeable to that account, county contributions may be levied to meet the deficiency on any parishes in the county liable to be assessed to county contributions for those purposes.

(6) Any precept for county contributions may include as separate items a contribution for general county purposes, and a contribution for any special county purpose or purposes, and subject as in this or any other Act mentioned, county contributions, whether for general or special county purposes, which are liable to be assessed on the parishes, shall be assessed on such parishes in proportion to the annual value thereof, as determined by the standard or basis for the county rate (*n*), and all enactments applying to such standard or basis or to county rate shall (save as altered by this Act, apply so far as may be, consistently with the tenor thereof, to county contributions, *and those enactments shall extend to all parishes within any borough* (*o*) *which are liable under this Act to be assessed to county contributions.*

(7) The county council shall keep such accounts as will prevent the whole administrative county from being charged with expenditure properly payable by a portion only of the county, and will prevent any sums raised in a portion only of the county being applied in reduction of expenditure properly payable by the whole or a larger part of the county, and will further secure any such exemption as above in this section mentioned, and will prevent any sums by law specifically applicable to any particular purpose from being applied to any other purpose.

(8) In determining the amount of expenditure for any particular county purpose, general or special, a proper proportion of the cost of the officers and buildings and establishment of the county council may be added to the expenditure directly expended for that purpose.

(9) County contributions may be made retrospective in order to raise money for the payment of costs incurred, or having become payable at any time within six months before the demand of the contributions.

69. [*Borrowing by county council. Inapplicable to London; see sec.* 40 (9), *ante.*]

70. [*Issue of county stock. Inapplicable to London; see sec.* 40 (9), *ante.*]

Audit of accounts of county council.

71.—(1) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as defined by this Act (*p*), and be in the form for the time being prescribed by the Local Government Board.

(*m*) **County contributions.** These are raised by precepts issued to the guardians in accordance with the County Rate Act, 1852, *post*, vol. ii. tit. "*Rating.*"

(*n*) **Basis of county rate.** See sec. 3 (i), and note thereto, *ante.*

(*o*) **Borough,** i.e., municipal borough. Sec. 100, *post.*

(*p*) **Local financial year,** i.e., the twelve months ending March 31st. Sec. 73 (1) *post.*

(2) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof (*q*) shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts. 51 & 52 Vict. c. 41.

(3) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act, 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit (*r*). Provided that the first schedule to the District Auditors Act, 1879, shall be modified in manner described in the second schedule to this Act. 38 & 39 Vict. c. 55. 42 & 43 Vict. c. 6.

72. [*Adaptation of part v. of* 45 *&* 46 *Vict. c.* 50, *as to corporate property and liabilities in boroughs and county boroughs.*]

Local Financial Year and Annual Budget.

73.—(1) After the appointed day, not being more than three years after the passing of this Act, the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year. Fixing of local financial year and consequent adjustments.

(2) All enactments relating to accounts of local authorities, or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

74.—(1) At the beginning of every local financial year, every county council shall cause to be submitted to them an estimate of the receipts and expenses of such council during that financial year, whether on account of property, contributions, rates, loans, or otherwise. Annual budget of county councils.

(2) The council shall estimate the amount which will require to be

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(*q*) **Return to Local Government Board.** See Mun. Corp. Act, 1882, secs. 26, 27, 28, and 233, *post*.

(*r*) **Audit by district auditors.** See the Public Health Act, 1875, secs. 247 and 250; the District Auditors Act, 1879; and the Local Authorities Expenses Act, 1887, *post*, vol. ii. tit. "*Audit*."

51 & 52 Vict. c. 41.

raised in the first six months, and in the second six months of the said financial year by means of contributions.

(3) If at the expiration of the first six months of such financial year it appears to the council that the amount of the contribution or rate estimated at the commencement of the year will be larger than is necessary or will be insufficient, the council may revise the estimate and alter accordingly the amount of the contribution or rate.

PART V.—SUPPLEMENTAL.

Application of Acts.

Application of 45 & 46 Vict. c. 50, to county councils and this Act.

47 & 48 Vict. c. 70.

75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882 (*s*), namely, part two, part three, part four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884) (*t*), section one hundred and twenty-four in part five, part twelve, part thirteen, the *second schedule* (*u*), part two and part three of the third schedule, and part one of the eighth schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said councils and their chairmen, members, committees, and officers, and to the other provisions of this Act.

Provided as follows:—

(1) [*Repealed by County Councils (Elections) Act, 1891, post.*]

(2) Such person as the county council appoint shall be the returning officer (*x*) for the election of county councillors of the county council, in substitution for the mayor, and for the aldermen assigned for that purpose by the council.

(3) The returning officer, without prejudice to any other power, may by writing under his hand appoint a fit person to be his deputy for all or any of the purposes relating to the election of any such councillor, and may by himself or such deputy, exercise any powers and do any things which a returning officer is authorised or required to exercise or do in relation to such election, and shall for the purposes of the election have all the powers of the sheriff.

(4) A reference in this Act, or in the enactments applied by this Act, to the returning officer or to the mayor, or to the alderman shall, so far as relates to the election of any such councillor, be construed to refer to the returning officer, and any such deputy as above mentioned.

(*s*) **Municipal Corporations Act, 1882.** The portions of this Act above referred to are set out *post*.

(*t*) **Municipal Elections (Corrupt Practices) Act, 1884.** See the Act, *post*, p. 545. Its provisions are incorporated into the present Act by this section. *Walker, Ex parte*, 22 Q. B. D. 384; 58 L. J. Q. B. 190.

(*u*) **Second schedule.** By sec. 10 of the London County Council (General Powers) Act, 1893, *post*, p. 114, the schedule to that Act is substituted for the second schedule of the Mun. Corp. Act, 1882, in regard to the meetings and proceedings of the London County Council.

(*x*) **Returning officer.** As to whether the returning officer is disqualified for election to the county council, see the County Councils (Elections) Act, 1891, sec. 6, *post*.

(5) A reference in the said enactments to the town clerk so far as respects the election of any such councillor shall be construed to refer to the returning officer or his deputy, and as respects matters subsequent to the election, shall be construed to refer to the clerk of the county council. 51 & 52 Vict. c. 41.

(6) [*Repealed by County Councils (Elections) Act, 1891, post.*]

(7) Some place fixed by the returning officer shall, *except where the election is in a borough* (*y*), be substituted for the town clerk's office, and, as respects the hearing of objections to nomination papers, for the town hall, but such place shall, *if the electoral division is the whole or part of an urban district, be in that district, and in any other case shall* (*z*), be in the electoral division or in an adjoining electoral division.

(8) The returning officer shall forthwith after the election of county councillors for the county return the names of the persons elected to the clerk of the county council.

(9) [*Repealed by County Councils (Elections) Act, 1891, post.*]

(10) An outgoing alderman shall not as alderman vote in the election of a chairman.

(11) The hours of the poll shall be those fixed by the Elections (Hours of Poll) Act, 1885 (*a*). 48 & 49 Vict. c. 10.

(12) . . . (*b*)

(13) [*Repealed by County Councils (Elections) Act, 1891, post.*]

(14) *Ten days* (*c*) shall be substituted for five days in section thirty-four of the Municipal Corporations Act, 1882, as the time within which a person elected to a corporate office is to accept that office, and twelve months shall be substituted for six months in section thirty-nine of the said Act, as the period of absence which disqualifies an alderman or councillor.

(15) The quorum of the council shall be one-fourth of the whole number of the council, and one-fourth shall, for the purposes of this section, *be substituted for one-third in paragraph ten of the second schedule to the Municipal Corporations Act*, 1882 (*d*).

(16) Nothing in the Municipal Corporations Act, 1882, as applied by this section—

(a) shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner; or,

(b) shall apply any of the provisions of the Municipal Corporations Act, 1882, with reference to boundaries or the alteration of wards or borough auditors, nor any of the following provisions, namely, sub-section five of section fifteen, section sixteen, section two hundred and fifty-one, or section two hundred and fifty-seven; or

(c) shall render any person elected to a corporate office without

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(*y*) **Borough**, i.e., municipal borough. Sec. 100, *post.*

(*z*) **Urban district.** This expression does not apply to the Metropolis.

(*a*) **Hours of poll**, i.e., from 8 a.m. to 8 p.m. of the same day.

(*b*) **Sub-section 12** relates to the separate non-resident list provided for by sec. 11 of the Mun. Corp. Act, 1882, *post*, and is inapplicable to the Metropolis, for which a non-resident list is not made. See sec. 77, *post.*

(*c*) **Ten days.** Now any time within three months. *Coun. Counc. (Electns.) Act*, 1891, sec. 4, *post.*

(*d*) **Second schedule of Mun. Corp. Act, 1882.** See note (*u*), *supra.*

51 & 52 Vict. c. 41.

his consent to his nomination being previously obtained liable to pay a fine on non-acceptance of office, or render a chairman or deputy chairman disqualified as such by reason of absence; or

(d) [*Repealed by County Councils (Elections) Act, 1891, post.*]

(e) shall apply to a county council section seventeen of the said Act with respect to the town clerk, nor, unless the county council so resolve, section eighteen respecting the treasurer, but, if the county council so resolve, section eighteen shall supersede the existing enactments with respect to the county treasurer (*e*); or,

(f) shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval; or

(g) shall prevent the use of schools and public rooms for the purpose of taking the poll at elections under this Act, but section six of the Ballot Act, 1872 (*f*), shall apply in the case of elections under this Act, and the returning officer may, in addition to using such rooms free of charge for taking the poll, use the same free of charge for hearing objections to nomination papers and for counting votes.

35 & 36 Vict. c. 33.

(17) All costs properly incurred in relation to the holding of elections of councillors of county councils, so far as not otherwise provided for by law, shall be paid out of the county fund as general expenses.

(18) The said costs shall not exceed those allowed by part i. of the first schedule to the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act, 1885 (*g*), or by such scale as the county council may from time to time frame.

38 & 39 Vict. c. 84.
48 & 49 Vict. c. 62.

(19) Sections four, five, six, and seven of the Parliamentary Elections (Returning Officers) Act, 1875, as amended by the Parliamentary Elections (Returning Officers) Act (1875) Amendment Act, 1886 (*g*), shall apply as if they were herein re-enacted with the necessary modifications, and in particular with the substitution of the county council for the person from whom payment is claimed, and of one month for the period of fourteen days within which application may be made for taxation.

49 & 50 Vict. c. 57.

(20) A county council shall, on the request of the returning officer, prior to a poll being taken at any election of a councillor of such council, advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

(21) The meeting of a county council, or of any committee thereof, may be held at such place either within or without their county, as the council from time to time direct (*h*).

(*e*) **County treasurer.** The London County Council have resolved that sec. 18 of the Mun. Corp. Act, 1882, shall supersede the existing enactments with respect to the county treasurer. See the Council's Standing Orders.

(*f*) **Ballot Act, 1872, sec. 6.** See note to the Mun. Corp. Act, 1882, sched. 3, part iii., rule 1, *post*.

(*g*) **The Parly. Elections (Returning Officers) Acts, 1875, 1885, and 1886,** regulate the expenses and control the charges of returning officers at parliamentary elections, and contain provisions as to their payment and taxation.

(*h*) **Committee meetings.** If the council do not direct the place of meeting of any committee, the latter may do so. Sec. 82 (1), *post*.

76.—(1) The provisions of section four of the County Electors Act, 1888 (*i*), within respect to the framing of the lists and register of voters in parts shall extend to parishes situate within a parliamentary borough. 51 & 52 Vict. c. 41.

(2) *In the provisions of section four of the said Act with respect to making out the lists of voters according to the order in which the qualifying premises appear in the rate book, the county authority shall mean the county council* (*k*). Amendment of 51 & 52 Vict. c. 10.

(3) The names of the parliamentary electors and county electors in the lists in each polling district may be numbered consecutively, and such portion of those lists as consists of the names of parliamentary electors may be taken to form the register for the purpose of parliamentary elections, and such portion of those lists as contains the names of county electors may be taken to form the register of county electors.

(4) For the purpose of the provisions of the Acts relating to the appointment of revising barristers (*l*), and of section nine of the County Electors Act, 1888 (*i*), the county of Surrey and such portion of the county of London as is situate south of the Thames shall be deemed to be separate counties forming part of the south-eastern circuit; and such portion of the administrative county of London as is situate north of the Thames shall be deemed to form part of the county of Middlesex; and the county of Middlesex, inclusive of that portion, shall be deemed to be a separate county on a circuit; but any sum payable by the London County Council in respect of either of the said portions of the county, shall be paid as for a general county purpose.

(5) [*Payments under the County Electors Act*, 1888, *sec.* 11, *post, vol. ii., in the year* 1888. *Spent.*]

(6) *It is hereby declared that nothing in section twelve of the County Electors Act*, 1888, *applies to any person occupying property within a borough* (*m*). 51 & 52 Vict. c. 10.

(7) It shall be lawful for Her Majesty the Queen, by order in council (*n*), from time to time to alter the instructions, precepts, notices, and forms under the Registration of Electors Acts (*o*), in such manner as appears to Her Majesty necessary for carrying into effect this Act and the County Electors Act, 1888, and any other Act for the time being in force amending or affecting the Acts mentioned in this sub-section, and the instructions, precepts, notices, and forms specified in any such order in council shall be observed and be valid in law, and clerks of the peace, and town clerks, and other officers shall act accordingly.

(8) [*Appeals from revising barrister in the year* 1888. *Spent.*]

77. A person who is entitled to be registered as a county elector in respect of any qualification in the administrative county of London, in Residential qualification of county electors in administrative county of London.

(*i*) **County Electors Act, 1888.** *Post*, vol. ii. tit. "*County Electors.*"

(*k*) **Order of qualifying premises in rate book.** These provisions of sec. 4 of the County Electors Act, 1888, do not apply to the Metropolis, which is provided for by sec. 5 of that Act.

(*l*) **Revising barristers.** The Acts relating to the appointment of revising barristers are the Parliamentary Voters Registration Act, 1843 (6 Vict. c. 18), secs. 28 and 29; the Revising Barristers Acts, 1873, 1874, and 1886 (36 & 37 Vict. c. 70; 37 & 38 Vict. c. 53; 49 & 50 Vict. c. 42); and the County Electors Act, 1888, secs. 9 and 10.

(*m*) **Borough,** i.e., municipal borough. Sec. 100, *post.*

(*n*) **Order in Council.** The Order in Council now in force under this sub-section is "The Registration Order, 1895," and was published in the *London Gazette* of March 19th, 1895.

(*o*) **Registration of Electors Acts.** For the meaning of this expression see the County Electors Act, 1888, sec. 1, and note thereto, *post*, vol. ii. tit. "*County Electors.*"

51 & 52 Vict. c. 41.

all respects except that of residence, and is resident beyond seven miles but within fifteen miles (*p*) of the county, shall be entitled to be registered as a county elector.

Construction of Acts referring to business transferred.

78.—(1) All enactments in any Act, whether general or local and personal, relating to any business, powers, duties or liabilities transferred by or in pursuance of this Act from any authority to a county council, either alone or jointly with the quarter sessions, or to any joint committee, shall, subject to the provisions of this Act, and so far as circumstances admit, be construed as if—

(a) any reference therein to the said authority or to any committee or member thereof or to any meeting thereof (so far as it relates to the business, powers, duties, or liabilities transferred) referred to the county council or to a committee or member thereof or to a meeting thereof, as the case requires, and as if—

(b) a reference to any clerk or officer of such authority referred to the clerk or officer of a county council or committee thereof, as the case requires,

and all the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect.

(2) Provided that the transfer of powers and duties enacted by this Act shall not authorise any county council or any committee or member thereof—

(a) to exercise any of the powers of a court of record; or

(b) to administer an oath (*q*); or

(c) to exercise any jurisdiction under the Summary Jurisdiction Acts, or perform any judicial business, or otherwise act as justices or a justice of the peace;

but this enactment shall be without prejudice to the position of the chairman of the county council as justice of the peace during his term of office (*r*).

(3) Where under any such enactment as in this section mentioned, any powers, duties, or liabilities are to be exercised or discharged after any presentment or in any particular manner, or at any particular meeting, or subject to any other conditions, the county council may, by the standing orders for the regulation of their proceedings (*s*), provide for the exercise and discharge of those powers, duties, and liabilities without any such prior presentment or in a different manner, or at any meeting of the council fixed by the standing orders, or without such other conditions; and until such standing orders take effect shall exercise and discharge them in the like manner, and at the like time, and subject to the like conditions, so nearly as circumstances admit; and a presentment by

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(*p*) **Within fifteen miles.** The distance is measured in a straight line on a horizontal plane. Parly. Voters Registration Act, 1843 (6 Vict. c. 18), sec. 76; Mun. Corp. Act, 1882, sec. 231, *post*, p. 111. This sub-section supersedes sec. 12 of the County Electors Act, 1888, *post*, vol. ii., so far as London is concerned.

(*q*) **Oath** includes affirmation and declaration in the case of a person allowed by law to affirm or declare. *Interpretation Act*, 1889 (52 & 53 Vict. c. 63), sec. 3.

(*r*) **Justices of the peace.** The chairman of the county council is ex-officio a justice of the peace during his term of office. Sec. 2 (5) (b), *ante*.

(*s*) **Standing Orders.** The County Council may make, vary, or revoke Standing Orders for the regulation of their proceedings and business. Lon. Coun. Counc. (Genl. Powers) Act, 1893, sec. 10 and schedule, *post*, p. 114.

a grand jury (*t*) in relation to any such powers, duties, or liabilities, shall cease to be made otherwise than by way of indictment. 51 & 52 Vict. c. 41.

(4) For the purposes of this section the expression "authority" means a Secretary of State, the Board of Trade, the Local Government Board, and any Government department, also any commissioners, conservators, or public body, corporate or unincorporate, specified in a provisional order transferring any powers, duties, or liabilities to the county council, also any quarter sessions and any justices, also the Metropolitan Board of Works, or other local authority mentioned in this Act; and the expression "member of an authority" includes, where the authority are quarter sessions or justices, any justice, and the expression "meeting of an authority" includes a court of quarter sessions and the assembly of justices in special or petty sessions; and the expression "clerk of an authority" includes in relation to any quarter sessions or justices, the clerk of the peace or the clerk to a justice as the case requires.

This section shall apply as if a joint committee were a committee of the county council.

Proceedings of Councils and Committees.

Incorporation of county council.

79.—(1) The council of each county shall be a body corporate by the name of the county council with the addition of the name of the administrative county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without licence in mortmain.

(2) All duties and liabilities of the inhabitants of a county shall become and be duties and liabilities of the council of such county (*u*).

(3) Where any enactment (whether relating to lunatic asylums or bridges, or other county purposes, or to quarter sessions) requires or authorises land to be conveyed or granted to, or any contract or agreement to be made in the name of, the clerk of the peace, or any justice or justices or other person, on behalf of the county or quarter sessions, or justices of the county, such land shall be conveyed or granted to, and such contract and agreement shall be made with, the council of the administrative county concerned.

Payments out of fund and finance committee of county council.

80.—(1) All payments to and out of the county fund shall be made to and by the county treasurer, and all payments out of the fund shall, unless made in pursuance of the specific requirement of an Act of Parliament or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council and countersigned by the clerk of the council, and the same order may include several payments. Moreover all cheques for payment of moneys issued in pursuance of such order shall be countersigned by the clerk of the council or by a deputy approved by the council.

(2) Any such order may be removed into the High Court of Justice by writ of certiorari, and may be wholly or partly disallowed or confirmed

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(*t*) **Presentment by grand jury.** A presentment is the notice taken by a grand jury of any matter or offence from their own knowledge or observation, without a bill of indictment laid before them. Stephen's Com. vol. i.

(*u*) **Liabilities.** These liabilities are subject to the same conditions and restrictions as before the transfer. See *Salford (Mayor)* v. *Lancashire County Council*, 25 Q. B. D. 384; 59 L. J. Q. B. 576, cited in note (*f*) to sec. 64 (1), *ante*.

51 & 52 Vict. c. 41.

on motion and hearing with or without costs, according to the judgment and discretion of the court.

(3) Every county council shall from time to time appoint a finance committee (*x*) for regulating and controlling the finance of their county; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not be made by a county council, except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and (subject to the provisions of this Act respecting the standing joint committee) any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee (*y*).

(4) The notice of the meeting at which any resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or any resolution for incurring any costs, debt, or liability exceeding fifty pounds will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purpose for which they are to be paid or incurred.

(5) *This section shall not apply to county boroughs.*

Appointment of joint committees.

81.—(1) Any county council or councils, and any court or courts of quarter sessions, may from time to time join in appointing out of their respective bodies a joint committee (*z*) for any purpose in respect of which they are jointly interested.

(2) Any council or court taking part in the appointment of any joint committee under this section, may from time to time delegate to the committee any power which such council or court might exercise for the purpose for which the committee is appointed.

(3) Provided that nothing in this section shall authorise a council to delegate to a committee any power of making a rate or borrowing any money.

(4) Subject to the terms of delegation, any such joint committee shall, in respect of any matter delegated to it, have the same power in all respects as the councils and courts appointing it, or any of them, as the case may be.

(5) The members of a joint committee appointed under this Act shall be appointed at such times and in such manner as may be from time to time fixed by the council or court who appointed them, and shall hold office for such time as may be fixed by the council or court who appointed them, so that where any members of the committee were appointed by the county council, such committee do not continue for more than three months after any triennial election of councillors of such county council.

(6) The costs of a joint committee shall be defrayed by the council by whom any of its members were appointed, or if appointed by more than one council in the proportion agreed to by them; and the accounts of such joint committee and their officers shall, for the purposes of the provisions of this Act, be deemed to be accounts of the county council and their officers.

(*x*) **Finance committee.** For further provisions regulating the appointment and proceedings of committees, see sec. 82, *post*, and Mun. Corp. Act, 1882, sec. 22, and notes thereto, *post*, p. 84.

(*y*) **Estimate of finance committee.** An estimate is not required in cases of expenditure incurred by the standing joint committee. Sec. 30 (3), *ante*.

(*z*) **Joint committee.** This is in addition to the standing joint committee of the quarter sessions and the county council appointed under sec. 30, *ante*.

(7) [*Application of section to county boroughs.*]

(8) This section shall apply to the standing joint committees. 51 & 52 Vict. c. 41.

Proceedings of committees (*a*).

82.—(1) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such regulations the proceedings and quorum and the place of meeting whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote.

(2) Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval.

(3) In the case of a joint committee the councils and courts appointing the joint committee shall jointly have the powers given by this section, and the provisions of this section shall apply accordingly.

Officers.

Clerk of the peace and of county council.

83. Subject to the provisions of this Act for the protection of clerks of the peace holding office at the passing of this Act (*b*), the following provisions shall have effect:—

(1) The clerk of the peace of a county, besides acting as clerk of the peace of that county, shall also (subject to the provisions of this Act as respects particular counties) be the clerk of the county council (*c*), and in that capacity is referred to in this Act as the clerk of the county council.

(2) He shall be from time to time appointed by the standing joint committee of the county council and the quarter sessions, and may be removed by that joint committee.

(3) *He shall, subject to the directions of the custos rotulorum or the quarter sessions or the county council, as the case may require, have charge of and be responsible for the records and documents of the county* (*d*).

(4) The joint committee may appoint a deputy clerk (*e*) to hold office during their pleasure, and to act in lieu of such clerk in case of his death, illness, or absence, or in such other cases as may be determined by the joint committee, and wherever the deputy so acts, all things authorised or required to be done by, to, or before the clerk of the

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(*a*) **Committees.** See M. C. A., 1882, sec. 22, *post*, and notes thereto, for further provisions as to committees. The power of any committee to select its place of meeting would appear to be subject to the power of the council to direct where the committee shall meet. Sec. 75 (21), *ante*.

The provisions of this section apply to the visiting committee of asylums appointed by the county council. Lunacy Act, 1890, sec. 175 (1), *post*, vol. ii.

(*b*) **Provisions of this Act.** See sec. 118, *post*.

(*c*) **Clerk of county council.** The clerk of the peace for the county of London must be a separate officer from the clerk of the County Council. The latter is paid such salary as may be fixed by them. Sub-sec. (11), *infra*.

(*d*) **Sub-section (3).** This sub-section does not apply to London. See sub-sec. (11) (a), *infra*.

(*e*) **Deputy clerk.** The deputy clerk of the London County Council is appointed by that body itself. Sub-sec. (11) (b), *infra*.

51 & 52 Vict. c. 41.

peace, or clerk of the county council, may be done by, to, or before any such deputy; without prejudice to the appointment of a deputy clerk for the purpose of a second court on the division of the court of quarter sessions for judicial business (*f*).

(5) The council shall pay to the clerk of the peace in respect of his services as clerk of the peace *and as clerk of the county council* (*g*), such salary as may be from time to time fixed under the enactments relating thereto (*h*), and all fees and costs payable to the clerk of the peace which are not excluded when the salary of the clerk of the peace is fixed shall be paid to the county fund, and for the purpose of the enactments relating to such salary and fees, the standing joint committee of the county council and the quarter sessions shall be substituted for the quarter sessions and the local authority respectively.

(6) The clerk of the peace, when acting in relation to any business of the county council, and when acting under the Acts relating to the registration of parliamentary voters (*i*), or to the deposit of plans or documents, or to jury lists (*k*), or to any registration matters, shall act under the direction of the county council, and all enactments relating to such business, registration, or deposit, shall be construed as if clerk of the county council were therein substituted for clerk of the peace.

(7), (8), (9), (10) [*Clerks of the peace in Sussex, Suffolk, Lancaster, Yorkshire and Lincolnshire.*]

(11) The clerk of the peace for the county of London shall be a separate officer from the clerk of the county council for the administrative county of London, and

(a) the clerk of the peace shall, subject to the directions of the quarter sessions, have charge of and be responsible for the records and documents of those sessions and of the justices out of session, and the clerk of the county council shall, subject to the directions of the council, have charge of and be responsible for all other documents of the county; and

(b) the council may from time to time appoint a deputy clerk of the council, and the foregoing provisions of this section with respect to the deputy clerk shall apply; and

(c) The council shall pay to the clerk of the council such salary as may be from time to time fixed by them (*l*).

(12) The county council shall cause their clerk or other officer from

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(*f*) **Deputy clerk of quarter sessions.** Deputy clerks for the purpose of a second court are appointed under the Stipendiary Magistrates Act, 1858 (21 & 22 Vict. c. 73), sec. 11.

(*g*) **Clerk of county council.** See sub-sections (1) and (11).

(*h*) **Salary of clerk of peace.** For provisions regulating the salaries of clerks of the peace, see the Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), secs. 9 and 10. For the regulations for ascertaining and appointing the fees to which any clerk of the peace shall be entitled, see the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 30. See also sec. 24 (2) (h), *ante*, and note thereto, as to compensation to clerks of the peace for loss of fees.

(*i*) **Registration of parliamentary voters.** See note (*t*) to sec. 3 (xii), *ante*.

(*k*) **Jury lists.** See sec. 89 (2), and note thereto, *post*.

(*l*) **Salary of clerk of county council.** As to the payment, over and above his fixed salary, of fees and expenses to any officer for performing additional duties imposed upon him by statute, and the distinction between fees and expenses, see *Reg.* v. *Allday*, 7 E. & B. 799, and cases there cited at pp. 801 and 802; 26 L. J. Q. B. 292.

time to time to send to a Secretary of State or the Local Government Board such returns and information as may from time to time be required by either House of Parliament. 51 & 52 Vict. c. 41.

(13) Provided always, that no paid clerk or other paid official in the permanent employment of a county council who is required to devote his whole time to such employment shall be eligible to serve in Parliament.

Appointment of the justices' clerks and clerks of committees.

84.—(1) The salaried clerk of every petty sessional division (*m*) shall be from time to time appointed, and removed, as heretofore.

(2) The county council shall pay to the salaried clerks of petty sessional divisions such salaries as may be fixed under the enactments relating to those clerks, and all fees and costs payable to such clerks which are not excluded in the fixing of their salaries shall be paid into the county fund, and in the enactments relating to such salaries and fees (*n*) the standing joint committee shall be substituted for the quarter sessions justices and the local authority respectively.

Regulations for Bicycles, &c.

Regulations for bicycles, &c.

85.—(1) The provisions of section twenty-six, sub-section five, of the Highways and Locomotives (Amendment) Act, 1878, and section twenty-three, sub-section one, of the Municipal Corporations Act, 1882, in so far as it gives power to the council to make byelaws regulating the use of carriages herein referred to, and all other provisions of any public or private Acts, in so far as they give power to any local authority to make byelaws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts; and the following additional regulations shall be observed by any person or persons riding or being upon such carriage:—

(a) During the period between one hour after sunset and one hour before sunrise, every person riding or being upon such carriage shall carry attached to the carriage a lamp, which shall be so constructed and placed as to exhibit a light in the direction in which he is proceeding, and so lighted and kept lighted, as to afford adequate means of signalling the approach or position of the carriage;

(b) Upon overtaking any cart or carriage, or any horse, mule, or other beast of burden, or any foot passenger, being on or proceeding along the carriage way, every such person shall within a reasonable distance from and before passing such cart or carriage, horse, mule, or other beast of burden, or such foot passenger, by sounding a bell or whistle, or otherwise, give audible and sufficient warning of the approach of the carriage.

(2) Any person summarily convicted of offending against the regulations made by this section, shall for each and every such offence, forfeit and pay any sum not exceeding forty shillings.

(*m*) **Clerks of petty sessional divisions.** The clerks of petty sessional divisions are appointed by, and hold office during the pleasure of, the justices. Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), sec. 5 (4).

(*n*) **Enactments relating to salaries and fees,** i.e., the Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), secs. 9 and 10, and the Justices' Clerks Act, 1877 (40 & 41 Vict. c. 43). As to the fees payable to the clerk of the peace and the clerks of the justices in the county of London, see sec. 115 (5), *post*.

51 & 52 Vict. c. 41.

Adaptation of Lunatic Asylum Acts.

Adaptation of Acts.

86. For the purpose of adapting the Acts relating to pauper lunatic asylums to the provisions of this Act, the following provisions shall have effect:—

(1), (2), (3), (4) [*Repealed and replaced by Lunacy Act*, 1890, *post*, *vol. ii.*]

(5) Any asylum provided in whole or in part at the cost of a county shall for the purposes of this Act be included in the expression "county lunatic asylum."

(6), (7) [*Repealed and replaced by Lunacy Act*, 1890, *post, vol. ii.*]

Application of provisions of 38 & 39 Vict. c. 55, as to local inquiries and provisional orders.

87.—(1) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference (*o*), to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act (*p*).

(2) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of provisional orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto (*q*).

(*o*) **Determine any difference.** This section is confined to differences to be determined by the Local Government Board otherwise than by arbitration. Where differences are to be determined by the arbitration of that Board, they must proceed under sec. 63, *ante*. *Kent County Council and Sandgate Local Board, In re*, *ante*, p. 41.

(*p*) **Local inquiry.** Secs. 293—296 of the Pub. Hlth. Act, 1875, are set out in sched. 1 of the Pub. Hlth. (London) Act, 1891, *post*.

(*q*) **Provisional orders.** As to what provisional orders affecting London may be made by the Local Government Board under this Act, see secs. 4, 10, 14 (3), 54, and 65 (2), *ante*.

The Public Health Act, 1875, enacts:—

Sec. 297. "With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made:—

"(1) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order, has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:

"(2) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject-matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections.

"(3) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:

"(4) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills:

"(5) Any Act confirming any provisional order made in pursuance of any of the sanitary Acts or of this Act, and any order in council made in pursuance of any of the sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

"(6) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such

(3) Provided that, where a provisional order transfers to county councils generally any powers, duties, or liabilities of Her Majesty's Privy Council, a Secretary of State, the Local Government Board, or other Government department (*r*), it shall not be necessary to hold a local inquiry nor to advertise in any local newspaper. 51 & 52 Vict. c. 41.

(4) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

(5) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority.

Adaptation of Act to Metropolis.

88. In the administrative county of London the following provisions shall have effect:—

(a) The county council may from time to time appoint any fit person to be deputy chairman (*s*), and to hold office during the term of office of the chairman (*t*), and may pay to such deputy chairman such remuneration as the county council may from time to time think fit;

(b) Subject to any rules from time to time made by the county council, anything authorised or required to be done by, to, or before the chairman (*u*), may be done by, to, or before such deputy chairman;

(c) [*Application of sec.* 191 *of Public Health Act*, 1875, *to Metropolis. Rep. by Public Health* (*London*) *Act*, 1891, *sec.* 142, *post.*]

Adjustment of law as regards courts, juries, sittings, and legal proceedings in Middlesex and London. 4 & 5 Will. 4, c. 36.

89.—(1) The Central Criminal Court Act, 1834, shall be construed as

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revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:

"(7) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:

"(8) Every Act confirming any such provisional order shall be deemed to be a public general Act."

Sec. 298. "The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs."

(*r*) **Transfer of powers to county council.** See sec. 10, *ante.*

(*s*) **Deputy chairman.** This is in addition to the power of electing a vice-chairman under sec. 2 (6), *ante.* Unlike the vice-chairman, the deputy chairman need not be a member of the County Council.

(*t*) **Term of office of chairman,** i.e., one year, Mun. Corp. Act, 1882, sec. 15 (3) *post*, p. 82. The chairman is elected annually on March 16th, or on such other day within ten days after March 8th as the County Council may fix. County Councils (Elections) Act, 1891, sec. 1 (3), *post*, vol. ii.

(*u*) **Powers and duties of chairman.** The powers and duties of the chairman are regulated by the London County Council (General Powers) Act, 1893, sec. 10 and schedule, *post*, p. 114; and by the Standing Orders which the Council are thereby authorised to make for the regulation of their business.

51 & 52 Vict. c. 41.

if the county of London were throughout mentioned therein as well as the county of Middlesex (*x*).

6 Geo. 4, c. 50.

(2) The County Juries Act, 1825, and the Acts amending the same, shall apply to the county of London in like manner as they apply to the county of Middlesex, and persons shall be qualified to serve as jurors (*y*), and lists of jurors shall be made out in like manner, so nearly as circumstances admit, as in that county (*z*); and the present exemption of inhabitants of the liberty and City of Westminster from serving on juries at quarter sessions for the county of Middlesex (*a*) shall cease; but nothing in this section shall alter the qualification of persons to serve as jurors within the City of London (*b*).

(3) Subject to rules of court made by the authority having power to make rules for the Supreme Court of Judicature (*c*), the county of London

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(*x*) **Central Criminal Court Act, 1834.** Sec. 2 of this Act defines the area of the jurisdiction of the Court, which includes the City of London, the county of Middlesex, and certain parts of the counties of Essex, Kent, and Surrey, therein set out; and now by this sub-section, the county of London.

(*y*) **Persons qualified as jurors.** The County Juries Act, 1825, sec. 1, provides that every man between the ages of twenty-one and sixty, residing in the county, who shall have in his own name, or in trust for him within the county, 10*l.* a year in lands or tenements of freehold, copyhold, or customary tenure, or in rents issuing out of such lands or tenements, or 20*l.* a year in leaseholds of twenty-one years or upwards, or being a householder, shall be rated or assessed to the poor rate or to the inhabited house duty in the county of Middlesex on a value of not less than 30*l.*, or who shall occupy a house containing not less than fifteen windows, shall be qualified and liable to serve on juries. As to the qualification of special jurors, see the Juries Act, 1870 (33 & 34 Vict. c. 77), sec. 6. Numerous persons are also exempt or disqualified from serving on juries. *Ib.* secs. 8, 9, 10, and schedule. Officers of customs are exempted by the *Customs Consolidation Act*, 1876 (39 & 40 *Vict. c.* 36), sec. 9. Registered dentists are exempted under the *Dentists Act*, 1878 (41 & 42 *Vict. c.* 33), sec. 30. Commissioners of taxes are exempted by the *Taxes Management Act*, 1880 (43 & 44 *Vict. c.* 19), sec. 40. Every soldier in the regular forces is exempted by the *Army Act*, 1881 (44 & 45 *Vict. c.* 58), sec. 147. Members of the London County Council are exempt from service on any jury within the administrative county of London by the *London Council (General Powers) Act*, 1890 (53 & 54 *Vict. ch. ccxliii.*), sec. 26; and "no man shall be returned to serve as a juror at any session of Nisi Prius or gaol delivery, in the county of Middlesex, who has served as a juror at either of such sessions in the said county, in either of the two terms or vacations next immediately preceding, and has the sheriff's certificate of having so served." County Juries Act, 1825, sec. 42. The sheriff is bound to give such certificate on application. *Ib.* sec. 40. This exemption does not extend to grand or special jurors. *Ib.* secs. 40 and 42.

(*z*) **Lists of jurors.** The clerk of the peace for the county issues his precept annually, on or before July 20th, to the churchwardens and overseers, requiring them to make out before the following September 1st, a list of men residing within their respective townships qualified and liable to serve on juries. *Juries Act*, 1862 (25 & 26 *Vict. c.* 107), sec. 4. On the receipt of this precept, the churchwardens and overseers make out the list in alphabetical order, and on the three first Sundays in September, fix a copy on the door of every church, chapel, and place of worship, within their parish. The lists are then produced to the justices, at a special petty sessions held for the purpose, in the last week of September, and are allowed and certified by them after hearing objections. From these lists the clerk of the peace makes out the jurors' book, and forwards it to the sheriff. The lists come into force on the following January 1st for one year. *County Juries Act*, 1825 (6 *Geo.* 4, *c.* 50), secs. 8 to 12. The actual peformance of the above duties of the churchwardens and overseers devolves upon the vestry clerk. *Vestries Act*, 1850 (13 & 14 *Vict. c.* 43), sec. 7.

(*a*) **Exemption of inhabitants of Westminster.** This exemption was contained in the *County Juries Act*, 1825, sec. 49, and was continued by the *Juries Act*, 1870, sec. 9.

(*b*) **Qualification of jurors in City.** No man is returnable to serve on common juries in the City of London "who shall not be a householder or an occupier of a shop, warehouse, counting house, chambers, or office, for the purpose of trade or commerce within the said City, and have lands, tenements, or personal estate of the value of 100*l.*" County Juries Act, 1825 (6 Geo. 4, c. 50), sec. 50.

(*c*) **Rules of court** are made by the judges of the Supreme Court of Judicature, acting under the powers and provisions contained in the Judicature Acts, 1873 to 1894.

and the county of Middlesex shall be deemed to be one county for the purpose of all legal proceedings, civil or criminal, in the Supreme Court or Central Criminal Court, or any other court except the court of quarter sessions, and also for the purpose of the sittings of the Supreme Court, Central Criminal Court, or such other court as aforesaid, or of any judge of any of such courts, and also for the purpose of any jury, and of any court of assize, oyer and terminer, and gaol delivery; and all enactments, rules, orders, and documents referring to Middlesex shall be construed so as to give effect to this section; and rules of court may be from time to time made for the purpose of carrying this section into effect, and for regulating the issue of precepts to the sheriffs of the counties of London and Middlesex for the return of jurors, and the jurors so returned shall have the same powers, duties, and liabilities as if the two counties were one county. 51 & 52 Vict. c. 41.

Special provisions as to adjustment in the Metropolis.

90. In the adjustment of the property, debts, and liabilities between the counties of Surrey and Middlesex respectively, and the county of London (*d*), the annual sums payable by the counties of Surrey and Middlesex respectively in respect of certain bridges in pursuance of the Metropolis Toll Bridges Act, 1877 (*e*), shall be deemed to be liabilities which shall be taken into consideration upon such adjustment. 40 & 41 Vict. c. 99.

Adjustment as regards the Militia Acts.

91. The Acts relating to the general and local militia of the rest of England and Wales (*f*) shall apply to the whole of the county of London (*g*) in like manner as they apply to any county at large; and accordingly Her Majesty shall from time to time appoint a lieutenant of the county of London, provided that nothing in this section shall affect section fifty of the Militia Act, 1882 (*f*). 45 & 46 Vict. c. 49.

Savings.

Saving for votes at any parliamentary elections.

92.—(1) Nothing in this Act, nor anything done in pursuance of this Act, shall alter the limits of any parliamentary borough or parliamentary county (*h*), or the right of any person to be registered as a voter at any parliamentary election (*i*).

(2) Where by virtue of the provisions of this Act with respect to the county of London, *or to urban sanitary districts situate partly within and partly without the boundary of a county* (*k*), a place situate in a parlia-

(*d*) **Adjustment of property, &c.** See sec. 40 (7), and note thereto, *ante*.

(*e*) **Metropolis Toll Bridges Act, 1877.** Sec. 27 required the counties of Surrey and Middlesex to contribute 1,200*l*. a year each to the cost of maintaining the bridges vested in the Met. Bd. Wks. by that Act. See note to sec. 3 (viii), *ante*.

(*f*) **Militia.** See notes (*m*) and (*o*) to sec. 59 (2), *ante*.

(*g*) **County of London** is defined by sec. 40 (2), *ante*.

(*h*) **Parly. borough or county.** The Metropolis (including the City of London) therefore continues for parliamentary purposes to form part of the counties of Middlesex, Surrey, and Kent, as defined by the Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), sched. 6, part iii. For list of metropolitan parliamentary boroughs see *id.* sched. 6, part i.

(*i*) **Right to be registered.** A freeholder therefore retains his right to be registered as a voter at parliamentary elections for the parliamentary county in which his property is situate, provided that he does not, by occupying it himself, become entitled to a vote for a borough. See Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), sec. 24: and *Webb, app., Overseers of Aston, resps.*, 5 M. & G. 14.

(*k*) **Urban sanitary districts.** The words in italics do not affect London. For the purposes of the Public Health Act, 1875 (38 & 39 Vict. c. 55), England, except the Metropolis, consists of districts called urban sanitary districts and rural sanitary districts, subject to the jurisdiction of local authorities called urban sanitary authorities and rural sanitary authorities. *Ib.* sec. 5.

51 & 52 Vict. c. 41.

mentary county becomes part of the county of a council other than the council having authority over the largest part of the parliamentary county, that is to say, the part which contains the largest number of occupation voters (*l*), then, for the purpose of making out and revising the lists of voters, of conducting any parliamentary election, of polling districts, and assigning polling places (*m*), and for all purposes of and incidental to such matters, including the payment of expenses, such place shall be deemed to be part of the same county as the said largest part of the said parliamentary county, and the sheriff, council, *clerk of the peace* (*n*), authorities, and officers of that county shall have authority accordingly in the said place, and the provisions of the Registration Act, 1885, with respect to parliamentary counties extending into more county quarter sessional areas than one, shall apply with the necessary modifications.

48 & 49 Vict. c. 15.

(3) Provided that the *clerk of the peace* (*n*) who receives from the revising barrister the lists of voters in any such place shall supply to any other *clerk of the peace* (*n*) or other officer such number of revised lists as he may require for the purpose of making up a register of county electors.

Saving for metropolitan and City police.

93.—(1) Nothing in this Act shall alter the metropolitan police district (*o*), nor (save as is expressly provided with respect to contributions in substitution for local grants (*p*) affect the metropolitan police force (*q*),

(*l*) **Occupation voters** here means parliamentary county occupation voters, and not those for a parliamentary borough. In those parliamentary boroughs which formerly formed part of the counties of Middlesex, Surrey, and Kent, and which now constitute the county of London, as defined by sec. 40 (2), *ante*, the county council having authority over the largest part of the parliamentary county is the authority for the parliamentary county purposes mentioned in the present sub-section, and the London County Council is the authority for parliamentary borough purposes. *Weller* v. *Collins*, 54 J. P. 441.

(*m*) **Polling districts; polling places.** See sec. 3 (xii) and note thereto, *ante*. "Where a parliamentary county extends into more county quarter sessional areas than one, the court of quarter sessions for the area which comprises the largest part in extent of such parliamentary county shall be the local authority having power to divide such parliamentary county into polling districts." Registration Act, 1885, sec. 13 (2). "Where a parliamentary county extends into more county quarter sessional areas than one, the local authority having power to divide the said county into polling districts, shall have power to agree with any other court of quarter sessions having jurisdiction in that area for the constitution of a joint committee to take into consideration the division of such county into polling districts and assigning of polling places to such districts, and shall, after receiving the report of the said committee, make such local order thereon as they may think fit. *Ib.* sec. 13 (3).

(*n*) **Clerk of the peace.** Now the clerk of the county council. Sec. 83 (6), *ante*, and County Electors Act, 1888, sec. 14, *post*, vol. ii. tit. "*County Electors*."

"Where a parliamentary county extends into more county quarter sessional areas than one, the clerk of the peace of each county quarter sessional area shall, in respect of each parish in such parliamentary county which is within his jurisdiction, act as and be deemed to be the clerk of the county within the meaning of the Parliamentary Registration Acts and this Act, until the lists of voters for such parish have been revised; but the revising barrister shall transmit the revised list of voters for such parish to the clerk of the peace of the county quarter sessional area which comprises the largest part in extent of the said parliamentary county, and save as aforesaid, such last-mentioned clerk shall, as respects the said parliamentary county, act as and be deemed to be sole clerk of the peace of the county for the purposes of the Parliamentary Registration Acts and this Act." Registration Act, 1885, sec. 7 (3).

(*o*) **The metropolitan police district,** as constituted by the Metropolitan Police Acts 1829 and 1839 (10 Geo. 4, c. 44, and 2 & 3 Vict. c. 47), and by an Order in Council dated Jan. 3rd, 1840, consists of the county of London, exclusive of the City of London and its liberties, the county of Middlesex, the county boroughs of Croydon and West Ham, and certain parishes and places in the counties of Surrey, Herts, Essex, and Kent, not more than fifteen miles from Charing Cross.

(*p*) **Local grants.** See sec. 24 (2) (k), *ante*.

(*q*) **The metropolitan police force** was established in 1829, and its jurisdiction

or the raising of money for the same, and nothing in this Act shall affect the police of the City of London (*r*). 51 & 52 Vict. c. 41.

(2) Nothing in this Act shall authorise any county council to raise any sum for the purposes of any police force by any contribution or rate levied within the metropolitan police district; and nothing in this Act shall alter the authority under the Riot (Damages) Act, 1886, within the metropolitan police district or the City of London (*s*). 49 & 50 Vict. c. 38.

94. The grant made by the County Council of London in respect of indoor paupers (*t*) shall be in addition to any payment made out of the metropolitan common poor fund (*u*), and nothing in this Act shall affect the enactments relating to the fund. Saving for metropolitan common poor fund.

95.—(1) Any enactment providing that any magistrate, commissioner, or other officer shall be a justice of the peace for Middlesex (*x*), shall be construed to refer to the county of London as well as the county of Middlesex. Saving as to Middlesex, Surrey, and Kent.

(2) Where any enactment, deed, instrument, or document refers to the county of Middlesex, Surrey, or Kent, such enactment, deed, instrument, or document shall be construed to apply to the same area to which it would have applied if this Act had not passed, except where such application is

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extends to the whole of the metropolitan police district. It is under the control of a commissioner, who is appointed by the Crown, and acts under the immediate authority of the Secretary of State. The salaries of the commissioner, of the receiver, and of two assistant commissioners are provided by Parliament. The sum to be provided for the remaining expenses of the metropolitan police is not to exceed 9*d.* in the £, calculated on the full annual value of all the property rateable to the poor within the metropolitan police district. Of this sum a proportion equal to about four-ninths was contributed by the Exchequer up to 1889, and the remainder raised by a rate levied by the overseers on the precept of the commissioner, on all the parishes in the district. [See the Metropolitan Police Acts, 1829, 1839, and 1856 (10 Geo. 4, c. 44; 2 & 3 Vict. c. 47; 19 & 20 Vict. c. 2); and the Police Rate Act, 1868 (31 & 32 Vict. c. 67), as amended by the Police Expenses Act, 1875 (38 & 39 Vict. c. 48), sec. 2.] The grant from the Exchequer is discontinued, and a contribution from the county councils substituted by sec. 24 (2) (k), *ante*, and see note thereto. 150,000*l.* a year is paid to the receiver of the metropolitan police district out of the local taxation (customs and excise) duties for the purposes of police superannuation, see note (*g*), *ante*, p. 19; and an additional rate may be levied to supply a deficiency in the police pension fund. Police Act, 1890 (53 & 54 Vict. c. 45), sec. 19.

(*r*) **City police.** In the City the police are controlled by the Corporation, under the City of London Police Act, 1839 (2 & 3 Vict. ch. xciv.). The commissioner is appointed by the Common Council, with the sanction of the Secretary of State; and one-fourth of the expenses is paid out of the City estate, and the remainder is defrayed by rate.

(*s*) **The Riot Damages Act, 1886,** provides for compensation to persons whose property may be injured or destroyed during a riot. The authorities for the execution of the Act are: in the City of London, the Common Council; and in the metropolitan police district, the receiver for the metropolitan police district. *Ib.* sched. 1.

(*t*) **Grant in respect of indoor paupers.** See sec. 43 (1) (b), *ante*.

(*u*) **Metropolitan common poor fund.** This fund was created by the Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 67). It is raised by contributions from the various unions and parishes in the Metropolis in proportion to their rateable value, upon precepts issued by the Local Government Board. The amounts raised are paid to a receiver appointed by that Board, and are applied to the payment of certain expenses specified. *Ib.* secs. 61—72. Fivepence a day is also paid out of the fund for each indoor pauper above the age of 16, on a certificate of the Local Government Board. Metropolitan Poor (Amendment) Act, 1870 (33 & 34 Vict. c. 18), sec. 1.

(*x*) **Justice of the peace for Middlesex.** The commissioners and assistant commissioners of the metropolitan police district are ex-officio justices of the peace for Middlesex and the other counties to which the district extends, with certain restrictions on the exercise of their office. Metropolitan Police Acts, 1829 and 1856 (10 Geo. 4, c. 44, sec. 1; and 19 & 20 Vict. c. 2, sec. 2). The metropolitan magistrates are ex-officio justices of the peace for Middlesex and certain other counties. Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), secs. 1 and 3.

51 & 52 Vict. c. 41.

inconsistent with this Act, or where the object of such enactment, deed, instrument, or document requires that it shall be construed to apply to the county of London.

Saving for Middlesex Land Registry.

96. Nothing in this Act shall alter the area to which the enactments relating to the registration of land in the county of Middlesex apply (*y*), and any reference in those enactments or in any deed, instrument, or document made or issued under or for the purpose of those enactments, to the county of Middlesex, shall be construed to apply to the same area to which it would have applied if this Act had not passed.

Saving as to liability for main roads.

97. Nothing in this Act with respect to main roads (*z*) shall alter the liability of any person or body of persons, corporate or unincorporate, not being a highway authority, to maintain and repair any road or part of a road.

Saving for powers of Commissioners of Inland Revenue and Customs.

98. Notwithstanding anything in the foregoing sections of this Act, the Commissioners of Inland Revenue and the Commissioners of Customs, and the officers of those commissioners respectively, shall have the same powers in relation to any articles subject to any duty of customs or excise, manufactured, imported, kept for sale, or sold, and any premises where the same may be, and to any machinery, apparatus, vessels, utensils, or conveyances used in connection therewith or the removal thereof, and in relation to the person manufacturing, importing, keeping for sale, or having the custody of the same, as they would have had if this Act had not passed, and any licences transferred in pursuance of this Act had continued to be granted by the Commissioners of Inland Revenue (*a*).

Definitions.

Definition of "written."

99. All notices and documents required by this Act to be in writing may be in writing or print, or partly in writing and partly in print, and for the purposes of this section "print" includes any mechanical mode of reproduction.

Interpretation of certain terms in the Act.

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:

"County."

The expression "county" does not include a county of a city or county of a town:

"Entire county."

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties.

"Division of a county."

The expression "division of a county," in the provisions of this Act

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(*y*) **Registration of land in Middlesex.** The Middlesex Registry Acts, 1708 and 1891 (7 Anne, c. 20 and 54 Vict. c. 10), require that a memorial of all deeds, conveyances, and wills affecting honors, manors, lands, tenements or hereditaments within the county of Middlesex, shall be registered, and shall be otherwise void against subsequent purchasers. Copyholds, leases at a rack rent or not exceeding 21 years, accompanied by actual possession and occupation, and chambers in Serjeants' Inn, the Inns of Court, or Inns of Chancery are excepted. The provisions of these Acts do not apply to land registered under the Land Registry Act, 1862 (25 & 26 Vict. c. 53), sec. 104, or the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), sec. 127.

(*z*) **Main roads.** See secs. 11 and 41 (4), *ante*.

(*a*) **Commissioners of Inland Revenue and Customs.** This section saves the powers of the Commissioners of Inland Revenue and Customs in relation to dutiable and excisable articles, in the event oft he power to levy the duties on local taxation licences being transferred to the county council under sec. 20 (3), *ante*.

respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division : 51 & 52 Vict. c. 41.

The expression "administrative county," means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough : "Administrative county."

The expression "Metropolis" means the City of London and the parishes and places mentioned in schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts (*b*) : "Metropolis." 18 & 19 Vict. c. 120.

The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882 (*c*), and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city : "Borough." 45 & 46 Vict. c. 50.

The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882 : "Quarter sessions borough."

The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the City of London, means the court of the mayor and aldermen in the inner chamber : "Quarter sessions."

The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part : "Parish."

The expressions "parliamentary county" (*d*), and "parliamentary election," and "parliamentary voters," have the same meaning as in the Registration Act, 1885, and the Acts therein referred to : "Parliamentary county." "Parliamentary election." "Parliamentary voters."

The expression "Secretary of State" means one of Her Majesty's principal Secretaries of State : "Secretary of State."

The expression "Treasury" means the Commissioners of Her Majesty's Treasury : "Treasury." 48 & 49 Vict. c. 15.

The expression "Bank of England" means the Governor and Company of the Bank of England : "Bank of England."

The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed (*e*) to be for the purpose of such enactment the appointed day : "Existing."

The expression "guardians" means guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834 : "Guardians." 4 & 5 Will. 4, c. 76.

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians : "Poor law union."

(*b*) **Metropolis Management Act, 1855.** *Post.*

(*c*) **Municipal Corporations Act, 1882.** *Post.*

(*d*) **Parliamentary county** means a county returning a member or members to serve in Parliament, and where a county is divided for the purpose of such return means a division of such county. *Registration Act*, 1885, sec. 19.

(*e*) **Appointed day.** See sec. 109, *post.*

51 & 52 Vict. c. 41.

"District council." "County district."

The expressions "district council" and "county district" mean respectively any district council established for purposes of local government under an Act of any future session of Parliament (*f*), and the district under the management of such council, and until such council is established, mean respectively—

(a) as regards the provisions of this Act relating to highways and main roads (*g*), a highway authority and highway area; and

(b) save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority (*h*):

38 & 39 Vict. c. 55.

"Highway area."

The expression "highway area," means, as the case may require, an urban sanitary district, a highway district, or a highway parish not included within any highway or urban sanitary district:

"Highway authority."

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board, or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties:

"Urban authority."

The expression "urban authority" means, until the establishment of district councils as aforesaid, an urban sanitary authority; and after their establishment, the district council of an urban county district:

"Rural authority."

The expression "rural authority" means, until the establishment of district councils as aforesaid, a rural sanitary authority; and after their establishment, the district council of a rural county district:

"Person."

The expression "person" includes any body of persons, whether corporate or unincorporate:

"Value."

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs be that value, and subject thereto shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate:

"Property."

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority . . .

(*f*) **District councils** are now established by the Local Government Act, 1894 (56 & 57 Vict. c. 73), sec. 21, for districts outside the Metropolis.

(*g*) **Main roads.** See secs. 11 and 41 (4), *ante*.

(*h*) **Urban and rural sanitary authorities.** See note (*k*) to sec. 92 (2), *ante*.

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities: 51 & 52 Vict. c. 41.

The expression "duties" includes responsibilities and obligations: "Powers."

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose: "Duties." "Liabilities."

The expression "powers, duties, and liabilities" includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act: "Powers, duties, and liabilities."

The expression "expenses" includes cost and charges: "Expenses."

The expression "costs" includes charges and expenses: "Costs."

The costs of assizes and of quarter and petty sessions include such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury lists, the costs of rewards ordered to be paid by the court, the costs of prosecutions including the costs of the defendant's witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of prisoners committed for trial from the borough: Costs of assizes and sessions.

The expression "assizes" includes the Central Criminal Court: "Assizes."

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer: "Pension."

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly: "Office."

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The expression "main road" when used in relation to the district of any highway or road authority, means so much of the main road as is situate within the district of such authority. "Main road."

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place. Day of nomination.

101. This Act shall not extend to Scotland or Ireland. Extent of Act.

102. This Act may be cited as the Local Government Act, 1888. Short title.

PART VI.—TRANSITORY PROVISIONS.

103. [*First election of county councillors. Spent.*]

104. [*Retirement of first county councillors and county aldermen. Spent.*]

105. [*Preliminary action of county councillors as provisional council. Spent.*]

106. [*First proceedings of provisional council. Spent.*]

51 & 52 Vict. c. 41.

107. [*Casual vacancies at first elections. Spent.*]

108. [*Power of Local Government Board to remedy possible defects, and make necessary provisions for first elections. Spent.*]

Appointed Day.

Appointed day.

109.—(1) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections or for different counties.

(2) Any enactment of this Act authorising anything to be done by the Commissioners of Inland Revenue or the Local Government Board, or relating to the registration of electors, or to the elections, or to any matter required to be done for the purpose of bringing this Act into operation on the appointed day, shall come into effect on the passing of this Act; but, save as aforesaid, and save so far as there may be anything in the context inconsistent therewith, any enactment of this Act shall come into operation on the appointed day.

Transitional Proceedings.

110. [*Saving for current rates, jury lists, &c. Spent.*]

111. [*Transitory provisions as to lunatic asylums. Spent.*]

112. [*Transitory provisions as to Contagious Diseases (Animals) Acts. Spent.*]

Transitory Provisions as to Metropolis.

113. [*Transitory provision as to sheriffs of London and Middlesex. Spent.*]

114. [*As to existing coroners for Middlesex, Surrey, and Kent. Obsolete* (*i*).]

115. [*Provisional commission of the peace for London. Spent.*]

116. [*Regulations to be observed until a scheme respecting the holding of courts of quarter sessions in the county of London comes into force. Such a scheme was approved by order of the Secretary of State dated 24th March, 1892, and is set out post, vol. ii. tit. "Quarter Sessions."*]

As to existing justices in Metropolis.

117.—(1) Nothing in this Act shall prevent a person who is an existing (*k*) justice of the peace for any of the counties of Middlesex, Surrey, or Kent, from continuing to be a justice of the peace for that county, and every such person and also every person who at the appointed day is a justice of the peace for the liberty and City of Westminster, the liberty of the Tower of London (*l*), or any liberty which by virtue of this Act becomes part of

(*i*) **Coroners' districts.** The coroners' districts were re-arranged, and London was divided into eight coroners' districts, wholly situate within the county, by Orders in Council dated August 25th, 1872, and May 21st, 1894 (*Lond. Gaz.* Sept. 6th, 1892, and June 1st, 1894). See the Coroners Act, 1844, sec. 4 and note thereto, *post*, vol. ii.

(*k*) **Existing** means existing at the appointed day. Sec. 100, *ante*.

(*l*) **Liberty of the Tower.** The administrative powers, duties, and liabilities of the quarter sessions and justices of the liberty of the Tower and their property, debts, and liabilities, are transferred to the London County Council by sec. 48, *ante*; and by Order in Council dated April 30th, 1894, the exclusive jurisdiction of the liberty of the Tower is abolished, and the liberty united with the county of London for all the purposes for which the justices of the liberty have hitherto exercised separate jurisdiction.

the county of London, shall, if and so long as he is resident or occupies property in the county of London, be a justice of the peace for that county in like manner as if he were assigned by a commission of the peace, but a person shall not after the passing of this Act be named in any commission as a justice of the peace for any liberty which by virtue of this Act becomes part of the county of London. 51 & 52 Vict. c. 41

(2) Provided always, that the provisions of this section shall not apply to any justice of the peace of the counties of Surrey, Kent, or Middlesex, or either of them so long as he shall hold any office connected with any court of quarter sessions of the county of London.

(3) The persons who at the passing of this Act are members of a visiting committee of any prison (*m*) situate in the county of London shall continue to form such visiting committee until a new visiting committee has been appointed in accordance with a rule of the Secretary of State.

(4) Where a person is a justice of the peace in and for the county of London by reason of his being personally declared by this Act to be a justice of the peace in and for the county of London, the Lord High Chancellor shall have the same power of removing such person from being a justice of the peace as if he were named in a commission of the peace.

(5) [*First chairman of court of quarter sessions for county of London. Spent.*]

(6) Nothing in this Act shall affect existing deputy lieutenants appointed by the Constable of the Tower of London as Lord Lieutenant of the Tower Hamlets (*n*).

Existing Officers.

Existing clerk of the peace and other officers.

118.—(1) A person holding office at the appointed day as clerk of the peace of a county, *besides continuing to be such clerk of the peace shall, subject to the provisions respecting certain counties in this Act mentioned, become the clerk of the county council* (*o*), *and* if appointed before the passing of this Act shall, notwithstanding anything in this Act, hold his offices by the same tenure and have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace.

(2) A person holding office at the passing of this Act as clerk of the peace, clerk of the general assessment sessions, or salaried clerk of a petty sessional division, shall be deemed to be an existing officer within the meaning of the provisions of this Act relating to compensation to existing officers who suffer pecuniary loss (*p*).

(3), (4), (5), (6), (7) [*Clerks of peace of Sussex, Suffolk, and Lancaster.*]

(8) The person who, at the appointed day, is clerk of the peace for Middlesex, if he held office at the passing of this Act, shall continue to be

(*m*) **Visiting committees** are appointed annually by the justices at such general or quarter sessions as may be prescribed by the Secretary of State. Prisons Act, 1877 (40 & 41 Vict. c. 21), sec. 13. Their duties are to visit the prison for which they are appointed, to hear complaints by prisoners, report on abuses, and on any repairs urgently required, take cognisance of matters of pressing necessity, and to perform such duties in relation to a prison as may be prescribed by the Secretary of State. *Ib.* sec. 14.

(*n*) **Lord Lieutenant of Tower Hamlets.** A lord lieutenant is now appointed for the county of London, including the Tower Hamlets. See sec. 91 and note (*m*) to sec. 59 (2), *ante*.

(*o*) **Clerk of the peace.** The clerk of the peace for the county of London is a separate officer from the clerk of the County Council. Sec. 83 (11), *ante*.

(*p*) **Compensation to existing officers.** See secs. 119 and 120, *post*.

51 & 52 Vict. c. 41.

that clerk, and, subject to the provisions of this Act (*q*), shall also be the first clerk of the peace for the county of London, and shall, notwithstanding anything in this Act, hold the office of clerk of the peace for each of the said counties by the same tenure and have the same power of appointing and acting by a deputy as heretofore (*r*).

(9) [*Existing clerk of gaol sessions in Yorkshire and Lincolnshire.*]

(10) If the person who at the appointed day is clerk of the peace for Surrey held office at the passing of this Act, then so long as he holds that office,—

(a) He shall, besides continuing to be that clerk, continue to be clerk of the peace at any quarter sessions held for the county of London at Newington (*s*), and be, for the purpose of all business transacted at those quarter sessions, deemed to be the clerk of the peace for the county of London, and as such shall have the same power of appointing and acting by a deputy as heretofore in his capacity of clerk of the peace for Surrey; and

(b) Such of the records of the county of Surrey as at the passing of this Act are in his custody at Newington, and, if this Act had not passed, would have remained in that custody, shall, subject to any order of the court of quarter sessions, continue to be kept in his custody at Newington.

(11) The persons who at the appointed day are salaried clerks for the petty sessional divisions, wholly or in part in the county of London shall, if appointed before the passing of this Act, be as to so much of such divisions as are in the county of London, the first salaried clerks of the petty sessional divisions of the county of London, and as to so much of such divisions as are not in the county of London, such persons shall also be the first salaried clerks of the petty sessional divisions of the counties in which such parts are situate.

(12) In the case of any of the following persons who, by virtue of this Act, become clerk of the peace for the county of London or salaried clerks of petty sessional divisions for the county of London, or who, for the purpose of all business transacted at the quarter sessions, held for the county of London at Newington, is to be deemed to be the clerk of the peace for the county of London (*t*) . . . their services as such clerks after the appointed day in the county of London (*t*) . . . shall be deemed to be a continuous service with their service as clerks of the peace and clerks of petty sessional divisions in the counties of Middlesex, Surrey, and Kent respectively (*t*) . . .

(13) All persons who at the appointed day hold office as county treasurer, county auditor, county solicitor, or county surveyor, or are officers (whether inspectors of weights and measures, public analysts, inspectors of petroleum or explosives (*u*), or other) of the quarter sessions

(*q*) **Subject to provisions of this Act.** See secs. 83 (11), *ante*, and sub-sec. 10 of the present section.

(*r*) **Clerk of peace of county of London.** After the existing clerk of the peace has vacated his office both the clerk of the peace and his deputy will be appointed by the standing joint committee. Sec. 83 (2) and (3), *ante*.

(*s*) **Newington sessions.** Cases triable at the quarter sessions for the county of London arising north of the Thames are heard at Clerkenwell, and those arising south of the Thames are heard at Newington. See scheme of the County Council dated March 1st, 1892, *post*, vol. ii. tit. "*Quarter Sessions*."

(*t*) **Sub-section 12.** The words omitted do not apply to London.

(*u*) **Public analysts, &c.** In the Metropolis public analysts and inspectors of petroleum and explosives were not officers of the quarter sessions or justices. See sec. 3 (x) and notes thereto, *ante*.

or justices of the county, or of the assessment sessions in the Metropolis, or any committee of such justices or any committee of visitors for lunatic asylums, or are servants under such sessions or justices and perform any duties in respect of the business transferred by or in pursuance of this Act to the county council, shall become the officers and servants of the county council. 51 & 52 Vict. c. 41.

(14) All persons who at the appointed day are officers and servants of the Metropolitan Board of Works shall become the officers and servants of the London County Council.

(15), (16) [*Existing constables of county and borough police forces. Inapplicable to London. See sec.* 93, *ante.*]

As to officers transferred to county councils.

119.—(1) The officers and servants of the quarter sessions or general assessment sessions, or justices, or any committee of such sessions or justices, or of any committee of visitors for lunatic asylums, or of the Metropolitan Board of Works, or other authority, who held office at the passing of this Act, and who by virtue of this Act become officers and servants of a county council (in this Act referred to as existing officers), shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties, shall receive not less salaries or remuneration, and be entitled to not less pensions (*x*) (if any), than they would have if this Act had not passed, and where any such officer can only be removed with the consent of a Secretary of State or the Local Government Board, such consent shall be part of the tenure of his office.

(2) The county council may distribute the business to be performed by existing officers in such manner as the council may think just, and every existing officer shall perform such duties in relation to that business as may be directed by the council.

(3) The county council may abolish the office of any existing officer whose office they may deem unnecessary, but such officer shall be entitled to compensation under this Act.

(4) [*Application of section to police constables. Inapplicable to London. See sec.* 93, *ante.*]

Compensation to existing officers.

120.—(1) Every existing officer (*y*) declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss (*z*) by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have

(*x*) **Pension** is defined sec. 100, *ante.*

(*y*) **Existing officer.** "Existing" means existing on the appointed day. Sec. 100. "Existing" officers whose offices are abolished by the county council are declared entitled to compensation. Sec. 119 (3). "Existing" coroners come within this section (sec. 114 (3)), and also "existing" clerks of the peace, clerks of the general assessment sessions, and salaried clerks of petty sessional divisions. Sec. 118 (2), *ante.*

(*z*) **Pecuniary loss.** See *Legg* v. *Stoke Newington Vestry*, 59 J. P. 696.

51 & 52 Vict. c. 41.

acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office (*a*).

(2) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declarations Act, 1835 (*b*), that the same is a true statement according to the best of his knowledge, information, and belief.

5 & 6 Will. 4. c. 62.

(3) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after (*c*) the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

(5) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath (*d*), which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6) The sum payable as compensation to any person in pursuance of

(*a*) **Compensation.** The Superannuation Act, 1859 (22 Vict. c. 26), sec. 7, empowers the Treasury to grant to any person who is removed in consequence of the abolition of his office such special annual allowance as may seem to the commissioners a reasonable and just compensation for loss of office, not exceeding two-thirds of the salary and emoluments of the office. Where the regulations respecting an office provide that the person appointed must have held a professional or other peculiar qualification for a certain number of years the commissioners may add that number of years in computing the amount of the allowance. Superannuation Act, 1884 (47 & 48 Vict. c. 57), sec. 3.

(*b*) **The Statutory Declarations Act, 1835** (5 & 6 Will. 4, c. 62), provides for the following declaration in lieu of an oath in certain cases:—"I, A—— B——, do solemnly and sincerely declare, that —— and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act intituled the Statutory Declarations Act, 1835." It may be made before any justice of the peace, notary public, or other officer by law authorised to administer an oath. *Ib.* sec. 18. This declaration cannot be taken or received by the county council, or by any committee, or by any member thereof (sec. 78 (2) (b) *ante*), unless such member be a justice of the peace or other officer by law authorised to administer an oath.

(*c*) **Within three months after,** i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3, exclusive of the day of the decision, but inclusive of the day of appeal. *Robinson* v. *Waddington*: *Radcliffe* v. *Bartholomew*: *post*, p. 199.

(*d*) **Oath,** in the case of persons allowed by law to affirm or declare, includes affirmation and declaration. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3.

this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same. 51 & 52 Vict. c. 41.

(7) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(8) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes (*e*).

Temporary Provision as to Grant from Exchequer.

121. [*Grant and application of part of probate duty and of horse and wheel tax during the year ending March* 31*st*, 1889.]

Savings.

122.—(1) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or of any property by this Act transferred to a county council; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to the county council under this Act shall be discharged, paid, and satisfied by such council. Saving for existing securities and discharge of debts.

(2) Where for the purpose of satisfying any such security or any debt or liability, it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for the provisions of this Act, such rate may continue to be levied and power to be exercised either by the authority who otherwise would have levied or exercised the same or by the county council as the case may require.

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123. All such byelaws, orders, and regulations of the Privy Council, Secretary of State, Board of Trade, Local Government Board, or Government department, or of any quarter sessions, council of a borough, the Metropolitan Board of Works, or other authority, whose powers and duties are transferred by or in pursuance of this Act to any county council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if they had been made by such council, subject, nevertheless, to revocation or alteration by such council in the manner in which byelaws can be made by such council, and also to any exceptions or modifications which may be made at the time of the transfer. Saving for existing byelaws.

(*e*) **General county purposes.** See sec. 68 (2), *ante*.

51 & 52 Vict. c. 41.

Saving for pending actions, contracts, &c.

124.—(1) If at the date of the transfer in this section mentioned any action or proceeding, or any cause of action or proceeding, is pending or existing by or against any authority in relation to any powers, duties, liabilities, or property by this Act transferred to the county council, the same shall not be in anywise prejudicially affected by reason of the passing of this Act, but may be continued, prosecuted, and enforced by or against such council as successors of the said authority in like manner as if this Act had not been passed.

(2) All contracts, deeds, bonds, agreements, and other instruments entered into or made and subsisting at the time of the transfer in this section mentioned, and affecting any such powers, duties, liabilities, or property of any authority as are by this Act transferred to a county council, shall be of as full force and effect against or in favour of the council, and may be enforced as fully and effectually, as if, instead of the authority, the said council had been a party thereto.

(3) All contracts or agreements which prior to the appointed day have been made by the clerk of the peace or any justice or justices or otherwise on behalf of a county, or any division or part of a county, shall have effect as if the council of that county had been named therein instead of the clerk of the peace or such justice or justices, and may be enforced by or against the county council accordingly.

(4) This section shall apply in the case of a committee of any authority in like manner as if the committee were such authority, and the committee of a county council were that council, and as if contracts and agreements by any such committee appointed by quarter sessions were contracts and agreements on behalf of a county.

Saving for charters, local Acts, &c.

125. Save so far as may be necessary to give effect to this Act or any scheme or order or other thing made or done thereunder nothing in this Act shall prejudicially alter or affect the powers, rights, privileges, or immunities of any municipal corporation, or the operation of any municipal charter, local Act of Parliament, or order confirmed by Parliament, which immediately before the passing of this Act was in force.

Repeals.

Repeal of Acts.

126. All enactments inconsistent with this Act are hereby repealed (*f*); Provided that—

(*f*) **Inconsistent enactments repealed.** This really goes no farther than the general law, *per* Blackburn, L. J., in *Garnett* v. *Bradley*, 3 App. Cas. 944, at p. 965; 48 L. J. Ex. 186, at p. 126. But where express powers are conferred for a special purpose by a special Act the general provisions of a public Act passed subsequently will not, as a rule, override the special provisions of the special Act; *London and Blackwall Rly. Co.* v. *Limehouse Dist. Bd.*, 3 K. & J. 123; 26 L. J. Ch. 164; *Thorpe* v. *Adams*, L. R. 6 C. P. 135; 40 L. J. M. C. 52; unless a contrary intention is clearly expressed or implied. *Taylor* v. *Oldham*, 4 Ch. D. 410; 46 L. J. Ch. 105; *Great Central Gas Co.* v. *Clarke*, 13 C. B. (N. S.) 838; 32 L. J. C. P. 41. In certain cases "special" Acts are held to repeal by implication the general law or the provisions of a prior general Act. *City and South London Rly. Co.* v. *Lon. Coun. Counc.* (1891), 2 Q. B. 513; 60 L. J. M. C. 149. Thus an authority in a special act to build a railway station on a particular site was held to override the enactments relating to the general building line. *Ib.*; and *London and Blackwall Rly. Co.* v. *Limehouse Dist. Bd.*, *supra*. And the powers conferred by the Elementary Education Act. 1870 (33 & 34 Vict. c. 75), secs. 19 and 20, were held to authorise the School Board to use their land for the statutory purposes for which it was acquired free from the restrictions as to distance from the centre of the road imposed by the repealed secs. 4 and 6 of the Met. Man. and Buildg. Acts Amend. Act, 1878. *London County Council* v. *London School Board* (1892), 2 Q. B. 606; 62 L. J. M. C. 30.

(1) Any enactment or document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment in this Act: 51 & 52 Vict. c. 41.

(2) This repeal shall not affect—

(a) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(b) Any right, privilege, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed; or

(c) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(d) Any power, investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such power, investigation, legal proceeding, and remedy may be exercised and carried on as if this Act had not passed.

SCHEDULES.

FIRST SCHEDULE. Sec. 20.

Local Taxation Licences (g).

Licences for the sale of intoxicating liquor for consumption on the premises:

- Retailers of spirits (publicans).
- Retailers of spirits, occasional licences.
- Retailers of beer.
- Retailers of beer, occasional licences.
- Retailers of beer and wine.
- Retailers of cider.
- Retailers of wine.
- Retailers of wine, occasional licences.
- Retailers of sweets.

Licences for the sale of intoxicating liquor by retail, by persons not licensed to deal therein, for consumption off the premises:

- Retailers of beer.
- Retailers of beer and wine.
- Retailers of cider.
- Retailers of wine.
- Retailers of sweets.
- Retailers of table beer.

Licences to deal in game.

Licences for—

- Beer dealers.
- Spirit dealers.
- Sweets dealers.
- Wine dealers.
- Refreshment house keepers.
- Dogs.
- Killing game.
- Guns.
- Appraisers.
- Auctioneers.
- Tobacco dealers.
- Carriages.
- [*Trade carts.*
- *Locomotives.*
- *Horses and mules.*
- *Horse dealers (h).*]
- Armorial bearings.
- Male servants.
- Hawkers.
- House agents.
- Pawnbrokers.
- Plate dealers.

(*g*) **Local taxation licences.** The proceeds of these licences are paid to the local taxation account, and afterwards distributed amongst the county councils. Sec. 20, *ante*.

(*h*) **Trade carts, locomotives, horses and mules, horse dealers.** Licences are not required for these. A bill was introduced during the session of 1888 imposing a tax on them, but was withdrawn. The Locomotives on Highways Act, 1896, sec. 8, *post*, vol. ii. tit. "*Highways*," imposes, however, an additional duty of excise on light locomotives, to be dealt with in manner directed with respect to duties on local taxation licences within the meaning of this Act.

51 & 52 Vict. c. 41.

Sec. 71.

SECOND SCHEDULE.

Alteration of Schedule to District Auditors Act, 1879 (*i*).
(42 & 43 *Vict. c.* 6.)

The following scale shall, until otherwise determined by Parliament, be substituted for so much of the scale set forth in the First Schedule to the District Auditors Act, 1879, as relates to expenditure amounting to 100,000*l.* and upwards:—

Where the Total of the Expenditure comprised in the Financial Statement is	The Sum shall be
100,000*l.* and under 150,000*l.*	50*l.*
150,000*l.* and under 200,000*l.*	60*l.*
200,000*l.* and upwards	15*l.* in addition for every 50,000*l.* or part thereof.

THIRD SCHEDULE.

Secs. 31, 34, 35, 36, 69.

County Boroughs.

* * * * * * *

(*i*) **District Auditors Act, 1879.** *Post*, vol. ii. tit. "*Audit.*" It is applied to the present Act by sec. 71 (3), *ante*.

MUNICIPAL CORPORATIONS ACT, 1882 (*a*).

45 & 46 Vict. c. 50. An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales. [18th August, **1882**

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1882.

Interpretation and construction.

7.—(1) In this Act (*b*)—

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

"Municipal corporation" (*b*) means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September, one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" (*b*) includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor (*b*), elective auditor, or revising assessor:

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" (*b*) means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made:

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

"Person" includes a body of persons corporate or unincorporate:

"Treasury" means the Commissioners of Her Majesty's Treasury:

(*a*) **Application of Act.** The following portions of this Act, viz., parts ii., iii., and iv. (as amended by the Mun. Electns. (Corr. Prac.) Act, 1884), sec. 124, in part v., parts xii. and xiii., parts ii. and iii. of the 3rd schedule, and part i. of the 8th schedule, so far as they are unrepealed and are consistent with the provisions of the Loc. Govt. Act, 1888, apply to the county council, with such modifications as are necessary to make them applicable to county councils, their chairmen, members, committees, and officers. *Ib.* secs. 71 (2) and 75, *ante*.

Secs. 74 and 75, and part iv., the provisions relating to the expenses of elections of councillors, and the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and sec. 56, are applied to the election of London vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48, *post*. These provisions, as modified and adapted, are embodied in the Vestrymen and Auditors (London) Election Order, 1897, *post*, p. 560.

(*b*) **Interpretation and construction.** Sec. 7 is not incorporated in the Loc. Govt. Act, 1888, sec. 75, *ante*, but the definitions it contains must obviously apply to the incorporated parts of the Act, with such modifications as are necessary to apply the provisions of those parts to county councils, e.g., for *Borough* read *County*; for *Municipal corporation* read *County council*; for *Burgess* read *County elector*; for *Mayor* read *Chairman of county council*; for *Alderman* read *County alderman*; for *Councillor* read *County councillor*; for *Municipal election* read *County council election*.

45 & 46 Vict. c. 50.

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"High Court" means Her Majesty's High Court of Justice:

"Justice" means one of Her Majesty's justices of the peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court:

"Bank of England" means the Governor and Company of the Bank of England:

"Schedule" means schedule to this Act, and "part" means part of this Act:

"Writing"(*c*) includes print, and "written" includes printed.

(2) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4) The schedules shall be read and have effect as if they were part of this Act.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

8. [*Corporate name. Replaced by Loc. Govt. Act*, 1888, *sec.* 79 (1), *ante.*]

Burgesses.

Burgesses. Qualification of burgesses and county electors.

9.—(1) A person shall not be deemed a burgess (*d*) for any purpose of this Act unless he is enrolled as a burgess.

(2) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows (*e*):

(a) Is of full age (*f*); and

(b) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months (*g*), in occupation (*h*), joint or several,

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(*c*) **Writing** includes printing, lithography, photography, and other modes of representing or reproducing words in a visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*d*) **Burgess qualification.** This qualification is extended to every part of a county not within the limits of a borough, and entitles every person possessing it to be registered as a county elector. County Electors Act, 1888, sec. 2, *post*, vol. ii.

(*e*) **Qualified as follows.** Possession of a ten pounds occupation qualification within the meaning of the Registration Act, 1885 (48 Vict. c. 15), also entitles a person to be registered as a county elector. County Electors Act, 1888, sec. 3, and schedule, *post*, vol. ii. tit. "*County Electors.*" Women are entitled to be so registered (sec. 63, *post*), provided they are unmarried. *Reg.* v. *Harrald*, L. R. 7 Q. B. 361; 41 L. J. Q. B. 173.

(*f*) **Of full age.** It is not necessary that the person should have been of full age during the whole of the qualifying period provided that he is of full age on the last day of July next preceding the revision of the lists. *Powell* v. *Bradley*, 18 C. B. (N. S.) 65; 34 L. J. C. P. 67; *Hargreaves* v. *Hopper*, 1 C. P. D. 195; 45 L. J. C. P. 105; *Parliamentary and Municipal Registration Act*, 1878 (41 & 42 Vict. c. 26), sec. 28 (7) (11).

(*g*) **Whole preceding twelve months.** Letting a house furnished for a period not exceeding four months in the whole during the qualifying period does not disqualify. Municipal Voters Relief Act, 1885 (48 Vict. c. 9), sec. 2. Nor does compulsory absence not exceeding four months at any one time in the performance of any duty arising from or incidental to any office, service, or employment. Electoral Disabilities Removal Act, 1891 (54 Vict. c. 11).

(*h*) **In occupation.** The right to a parliamentary vote by the occupation of a dwelling-house by virtue of an office, service, or employment does not extend to the municipal franchise, and such occupation does not, therefore, entitle a person to be registered as a county elector. *McLean* v. *Prichard*, 20 Q. B. D. 285; 52 J. P. 519. The occupier of certain premises transferred them to a company, and the same day took

of any house, warehouse, counting-house, shop (*i*), or other building (*k*) (in this Act referred to as qualifying property) in the borough; and

(c) Has during the whole of those twelve months resided (*l*) in the borough, or within seven miles thereof (*m*); and

(d) Has been rated (*n*) in respect of the qualifying property to all poor rates

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from the company a demise of part of the premises, which he continued to occupy. Held, that there had been no break in his occupation sufficient to disentitle him to be registered and enrolled under this section. *Timmis* v. *Albiston* (1895), 2 Q. B. 58; 64 L. J. Q. B. 564.

(*i*) **Any house, warehouse, &c.** The terms house, warehouse, &c. include any part of such house, warehouse, &c., separately occupied. Sec. 31, *post*. Exclusive occupation of part of a house, notwithstanding the right to the joint use of another part, is sufficient. *Greenway* v. *Bachelor* (*Aldridge's case*), 12 Q. B. D. 381; 53 L. J. Q. B. 180. *Stribling* v. *Halse*, 16 Q. B. D. 246; 55 L. J. Q. B. 15. The house, warehouse, &c. need not be the same throughout the period of qualification, or in the same parish. Sec. 33 (2), *post*.

(*k*) **Other building.** The building ought to be in some degree adapted to the use of man either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of a building. *Powell* v. *Boraston*, 18 C. B. N. S. 175, at p. 180; 34 L. J. C. P. 73. See further, as to what is within the description of "*building*," *Whitmore* v. *Bedford*, 5 M. & G. 9; 13 L. J. C. P. 55; *Watson* v. *Cotton*, 5 C. B. 51; 17 L. J. C. P. 68; *Powell* v. *Farmer*, 18 C. B. N. S. 169; 34 L. J. C. P. 71; *Morish* v. *Harris*, L. R. 1 C. P. 155; 35 L. J. C. P. 101.

(*l*) **Resided.** In order to constitute residence, a party must possess at least a sleeping apartment, but an uninterrupted abiding at such dwelling is not requisite. "Absence, no matter how long, if there be the liberty of returning at any time, and no abandonment of the intention to return whenever it may suit the party's pleasure or convenience so to do, will not prevent a constructive legal residence." *Powell* v. *Guest*, 18 C. B. N. S. 72 at p. 80; 34 L. J. C. P. 69. *Taylor* v. *St. Mary Abbott's, Kensington*, L. R. 6 C. P. 309; 40 L. J. C. P. 45; *Bond* v. *St. George's, Hanover Square*, L. R. 6 C. P. 312; 40 L. J. C. P. 47. A person who lived in London carried on business at Exeter, where he had an office and rooms, in which he transacted his business, took his meals, and slept, when he was in Exeter. *Held*, that he resided in Exeter as well as in London. *Reg.* v. *Exeter* (*Mayor, &c., of*), *Wescombe's case*, L. R. 4 Q. B. 110; 19 L. T. (N. S). 397. Where a person was absent for some years in Australia, but always intended to return to England, and his things were put in a room which was kept for his separate use, and he returned to England and occupied the room during the last five weeks of the qualifying period, he was held not to be entitled to be enrolled or registered. *Ward* v. *Maconochie* (1891), 7 T. L. R. 536. The residence must be *bonâ fide*, and not merely colourable. Payment of a nominal sum for the occasional use of a bedroom is not sufficient. *Whithorn* v. *Thomas*, 7 M. & G. 1; 14 L. J. C. P. 38.

If a person debars himself of the liberty of returning to a dwelling, he cannot be said to have had any legal residence there. Imprisonment is a break of residence sufficient to disqualify (*Powell* v. *Guest*, *supra*), as is also absence for more than four months consecutively in fulfilment of an engagement elsewhere. *Ford* v. *Drew*, 5 C. P. D. 49; 49 L. J. C. P. 172; *Ford* v. *Pye*, 9 C. P. 269; 43 L. J. C. P. 21; *Ford* v. *Hart*, 9 C. P. 273; 43 L. C. P. 247; *Beal* v. *Exeter Town Clerk*, 20 Q. B. D. 300; 57 L. J. Q. B. 128.

(*m*) **Within seven miles.** This distance is measured in a straight line on a horizontal plane (sec. 231, *post*), and is extended to fifteen miles in the case of county electors for the county of London by the Loc. Govt. Act, 1888 (sec. 77, *ante*).

(*n*) **Rated.** It is not necessary that the occupier himself, in order to entitle him to be registered and enrolled, should be rated or pay the rates, provided that he occupies a rateable tenement or hereditament for which somebody is rated and has paid the rates. Poor Rate Assessment Act, 1869 (32 & 33 Vict. c. 41), secs. 7 and 19. *Bradley* v. *Baylis*, 8 Q. B. D. 187, at p. 217; 51 L. J. Q. B. 183. *Marsh* v. *Estcourt*, 24 Q. B. D. 147; 59 L. J. Q. B. 100. An occupier who claims to be rated, and pays or tenders the amount of the rate, is entitled to be registered and enrolled though the overseers fail to enter his name in the rate book, sec. 32, *post*; and though the demand note and receipt are made out in the name of another person. *Unwin* v. *McMullen* (1891), 1 Q. B. 694; 60 L. J. Q. B. 400. The occupier of a house which, though rateable, has not been rated to the poor rate made during the qualifying period, and in respect of which such rate has not been paid, is not entitled to either the parliamentary or municipal franchise. *Palmer* v. *Wade*, *Wade* v. *Palmer* (1894), 1 Q. B. 268; 58 J. P. 511. Where a person succeeds to qualifying property by descent, marriage, devise, or promotion to a benefice or office, the occupancy and rating of the predecessor are equivalent to the occupancy and rating of the successor. Sec. 33 (1), *post*.

45 & 46 Vict. c. 50.

made during those twelve months for the parish wherein the property is situate; and

(e) Has on or before the twentieth of the same July paid all such rates (*o*), including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January.

(3) Every person so qualified shall be entitled to be enrolled as a burgess, unless he—

(a) Is an alien (*p*); or

(b) Has within the twelve months aforesaid received union or parochial relief (*q*) or other alms (*r*); or

(c) Is disentitled under any Act of Parliament (*s*).

(*o*) **Rates.** See note (*n*) on p. 77.

(*p*) **Alien.** By the common law of England, every person born within the dominions of the Crown, whether of English or foreign parents (except the children of foreign ambassadors), is a natural born English subject. And by the Foreign Protestants Naturlization Act, 1708 (7 Anne c. 5), sec. 3; the British Nationality Act, 1730 (4 Geo. 2, c. 21), secs. 1 and 2; and the British Nationality Act, 1772 (13 Geo. 3, c. 21), children and grandchildren born abroad, whose fathers are natural born English subjects, at the time of such children's birth, are declared natural born subjects of the Crown. This status does not extend beyond grandchildren. *De Geer* v. *Stone*, 22 Ch. D. 243. Residence alone, no matter how long, will not entitle an alien to the franchise; but he may apply for a certificate of naturalization after five years' residence, and on obtaining it and taking the oath of allegiance he becomes entitled to all political rights and privileges. Naturalization Act, 1870 (33 Vict. c. 14), secs. 7 and 9. An alien may also be granted letters of denization by the Crown, whereupon he becomes a British subject, and is entitled to the franchise. See *Middlesex*, 2 Peckwell, 117. Persons born in Hanover before the Queen's accession, and not naturalised, are aliens, though resident in England. *Isaacson* v. *Durant*, 17 Q. B. D. 54; 55 L. J. Q. B. 331.

(*q*) **Parochial relief.** Vaccination performed by a public vaccinator does not disqualify under this sub-section; *Vaccination Act*, 1867 (30 & 31 Vict. c. 84), sec. 26; nor does medical or surgical assistance or medicine at the expense of the poor rate. Medical Relief Disqualification Removal Act, 1884 (48 & 49 Vict. c. 46), secs. 2 (1) and 4. Attendance of a midwife is "medical assistance" within the meaning of this Act. *Honeybone* v. *Hambridge*, 18 Q. B. D. 418; 56 L. J. Q. B. 46. Payment by the guardians of the school fees for the child of a poor person does not deprive the parent of the franchise. Elementary Education Act, 1876 (39 & 40 Vict. c. 79), sec. 10. The admission of a person suffering from infectious disease into any hospital provided by the Metropolitan Asylums Managers does not disqualify such person, or the husband or parent of such person. Public Health (London) Act, 1891, sec. 80, *post*, p. 326. Relief given to a man's wife, or to his child under the age of sixteen, not being blind or deaf, or dumb, is considered as given to the husband or father, and relief to the child under sixteen of a widow is considered as given to the mother. *Poor Law Amendment Act*, 1834 (4 & 5 Will. 4, c. 76), sec. 56. Relief to the father does not disqualify the son. *Reg.* v. *Ireland*, L. R. 3 Q. B. 130; 37 L. J. Q. B. 73. Medical assistance from municipal charities is not a disqualification, nor is removal to a hospital by order of a justice at the expense of any local authority, nor the admission of a child to any public or endowed school. Sec. 33 (4), *post*.

(*r*) **Other alms** As to what "other alms" will disqualify, see *Harrison* v. *Carter*, 2 C. P. D. 26; 46 L. J. C. P. 57; *Magarill* v. *Whitehaven Overseers*, 16 Q. B. D. 242; 55 L. J. Q. B. 38; *Daniels* v. *Allard*, Fox and Smith, 70; *Edwards* v. *Lloyd*, 20 Q. B. D. 302; 57 L. J. Q. B. 121; *Dix* v. *Kent*, 55 J. P. 213; 63 L. T. (N. S.) 641; and *Cowen* v. *Kingston-upon-Hull (Town Clerk of)* (1897), 1 Q. B. 273; 66 L. J. Q. B. 185. From these cases it would seem that three elements are necessary to disqualify, viz., poverty, the receipt of alms, and the absence of that independence which is essential to the qualification of a voter.

(*s*) **Disentitled under Act of Parliament.** Persons convicted of treason or felony are disqualified until they have suffered the punishment or have received a free pardon. Forfeiture Act, 1870 (33 & 34 Vict. c 23), sec. 2. Any person convicted, whether on indictment or before an election court, of any corrupt practice at a parliamentary or municipal election, is incapable for seven years from the date of his conviction of being registered as an elector or voting at any election in the United Kingdom. And any person guilty of an illegal practice at any such election is, on summary conviction, incapable, during five years from the date of his conviction, of being registered as an elector or voting at any election for or within the borough where the illegal practice was committed. Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), secs. 6 (3) (4) (10), and 38 (5); Municipal Elections (Corrupt and Illegal Practices) Act, 1884, secs. 2 (2), 7, 17 (2), 23, and 28 (4), *post*, p. 544. These disquali-

Council; Chairman, Aldermen, and Councillors.

45 & 46 Vict. c. 50.

10. [*Constitution of council. Replaced as to county council by Loc. Govt. Act, 1888, sec. 1, ante.*]

Qualification of councillor.

11.—(1) The councillors shall be fit persons (*t*) elected by the burgesses.

(2) A person shall not be qualified to be elected or to be a councillor (*u*), unless he—

(a) Is enrolled and entitled to be enrolled (*x*) as a burgess; or

(b) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made (*y*); and

(c) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value (*z*) of thirty pounds, and in the case of any other borough of fifteen pounds.

(3) Provided, that every person shall be qualified to be elected and to be a councillor who is, at the time of election, qualified to elect (*a*) to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

Disqualifications for being councillor.

12.—(1) A person shall be disqualified for being elected and for being a councillor (*b*), if and while he—

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fications are extended to county councils by the Loc. Govt. Act, 1888, sec. 75, *ante*, p. 46; and to the Woolwich Local Bd. and metropolitan vestries by the Loc. Govt. Act, 1894, sec. 48 (3), *post*, p. 538. Persons convicted of a second offence under the Public Bodies (Corrupt Practices) Act, 1889, *post*, vol. ii., may, at the discretion of the court, be adjudged incapable of being registered as an elector for seven years. *Ib.* sec. 2.

(*t*) **Fit persons.** As to what persons are disqualified for being elected or being county councillors, see secs. 12 and 39 (3), and notes thereto, *post*; and for persons who are exempt from the obligation to accept office, see sec. 34 (3), *post*.

(*u*) **Qualified to be a councillor.** A peer owning property in the county, or who is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county, is qualified to be a county councillor or alderman, though not qualified to be a councillor or alderman under this Act. Loc. Govt. Act, 1888, sec. 2 (2), *ante*.

(*x*) **Entitled to be enrolled.** The burgess roll or register, as the case may be, is conclusive as to a person's right to vote, but is not conclusive evidence that he is "entitled to be enrolled" or registered. *Middleton* v. *Simpson*, 5 C. P. D. 183; 49 L. J. C. P. 312. And where a person is enrolled or registered, but is not "entitled to be enrolled" or registered, he is not qualified to be elected a councillor. *Flintham* v. *Roxburgh*, 17 Q. B. D. 44; 55 L. J. Q. B. 472. As to who is, and who is not, entitled to be enrolled or registered, see sec. 9 and notes thereto, *ante*.

(*y*) **Separate non-resident list.** See sec. 49, *post*. There is no separate non-resident list for the county of London. Any person who resides within fifteen miles of the county, and who is qualified in all respects except that of residence, is entitled to be registered as a county elector. *Loc. Govt. Act*, 1888, sec. 77, *ante*.

(*z*) **Annual value** here means "rateable value," and not the "gross estimated rental." *Baker* v. *Marsh*, 4 E. & B. 144; 24 L. J. Q. B. 1.

(*a*) **Qualified to elect.** It will be observed that this qualification does not involve the property or ratal qualification of the preceding sub-section. To be "qualified to elect," a person must also be "entitled to be enrolled." *Flintham* v. *Roxburgh*, *supra*. Women are incapable of being elected under this sub-section. *Beresford-Hope* v. *Lady Sandhurst*, 23 Q. B. D. 79 (C. A.); 58 L. J. Q. B. 316.

(*b*) **Disqualifications for being county councillor.** In addition to the persons disqualified by this section for being county councillors, the following are also disqualified, viz., persons who are not qualified under sec. 11, *supra*; women, *Beresford-Hope* v. *Lady Sandhurst*, *supra*; coroners for the county for which they are coroners, Loc. Govt. Act, 1888, sec. 5 (7), *ante*; bankrupts, see sec. 39 (1) (a), and note thereto,

45 & 46 Vict. c. 50.

(a) Is an *elective*(*c*) *auditor or a revising assessor* (*d*), or holds any office or place of profit (*e*), other than that of mayor or sheriff (*f*), in the gift or disposal of the council; or

(b) Is in holy orders, or the regular minister of a dissenting congregation (*g*); or

(c) Has directly or indirectly, by himself or his partner, any share or interest in any contract (*h*) or employment (*i*) with, by, or on behalf of the council;

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post. Any member of the council convicted of being concerned in the expenditure of corporate funds on a parliamentary election is for ever disabled to exercise any office in the same corporation or council. Sec. 124 (6), *post*. A person convicted of corruption in a public office is liable, *inter alia*, at the discretion of the court, to be adjudged incapable of being elected or appointed to any public office for seven years, and on a second conviction of ever holding any public office. Public Bodies Corrupt Practices Act, 1889, sec. 2, *post*, vol. ii.

No officer of the regular forces on the active list is capable of being mayor or alderman or holding any office in any municipal corporation. Army Act, 1881 (44 & 45 Vict. c. 58), sec. 146; and Army (Annual) Act, 1889 (52 Vict. c. 3), sec. 6. But this provision does not apply to officers of the auxiliary forces, whose competence or liability to be elected to or hold the office of mayor or alderman, or an office in a municipal corporation, is not affected by reason of his battalion or corps being assembled for annual training at the time of the nomination or election, or during his tenure of office. Army Act, 1881, sec. 181 (5). Officers of the regular forces are not disqualified for being elected or being a member of a county council; Army (Annual) Act, 1891 (54 Vict. c. 5), sec. 8; but apparently they cannot be compelled to accept office. Sec. 253, *post*.

An alderman is not disqualified for election to the office of councillor. By accepting the latter he vacates the former. *Reg.* v. *Bangor* (*Mayor, &c. of*), 18 Q. B. D. 349; 56 L. J. Q. B. 326, affd. in the House of Lords on another point S. C. nom. *Pritchard* v. *Bangor* (*Mayor, &c. of*), *post*, p. 103.

(*c*) **Elective auditor.** Inapplicable to county councils. Loc. Govt. Act, 1888, sec. 75 (16) (b), *ante*.

(*d*) **Revising assessor.** Revising assessors were elected under sec. 29, *post*, but were discontinued by the County Electors Act, 1888, sec. 4 (1) (a), *post*, vol. ii.

(*e*) **Office or place of profit.** From a case decided under a repealed turnpike Act (3 Geo. 4, c. 126, sec. 65) it would appear that it is immaterial whether the holder of such an office or place receives the profit himself or allows some one else to do so. *Delane* v. *Hillcoat*, 9 B. & C. 310.

(*f*) **Sheriff.** The sheriff of the county of London is appointed by the Crown. Loc. Govt. Act, 1888, sec. 40 (2), *ante*.

(*g*) **Ministers of religion.** Clerks in holy orders and other ministers of religion are not disqualified for being elected and for being county councillors or aldermen. *Loc. Govt. Act*, 1888, sec. 2 (2) (a), *ante*.

(*h*) **Share or interest in contract.** Interest in a contract not under seal, and not binding on the council, disqualifies. *Reg.* v. *Francis*, 18 Q. B. 526; 21 L. J. Q. B. 204. A contract made by a trustee on behalf of any person disqualifies such person. *Simpson* v. *Ready*, 12 M. & W. 736; 13 L. J. Ex. 193. It was held in an action for penalties under the repealed Mun. Corp. Act, 1835 (5 & 6 Will. 4, c. 76), secs. 28 and 53, that this disqualification applies only during the continuance of the contract, and ceases on its termination. *Lewis* v. *Carr*, 1 Ex. D. 484; 46 L. J. Ex. 314. See also *Woolley* v. *Kay*, 1 H. & N. 307; 25 L. J. Ex. 351.

Where an alderman, in the course of his trade, sold some iron railings to a person for work which the latter had contracted to execute for a town council, it was held that he was not interested so as to be liable for penalties. *Le Feuvre* v. *Lankester*, 3 E. & B. 530; 23 L. J. Q. B. 254. But a member of a local board who erected scaffolding to enable a person to alter certain gas fittings which the latter had contracted with the board to do was held to be concerned in a contract and liable to penalties, although he withdrew his bill and refused payment. *Tomkins* v. *Jolliffe*, 51 J. P. 24. And where persons under a contract with a local board employed a member of the board to do joinery work in connection with the contract, he was held liable to penalties. *Nutton* v. *Wilson*, 22 Q. B. D. 744; 58 L. J. Q. B. 443. A member of a local board who was reimbursed by the board for work done at the request of the surveyor was held disqualified and liable for penalties. *Fletcher* v. *Hudson*, 7 Q. B. D. 611; 51 L. J. Q. B. 48. Sale of goods to the council by a member of the council disqualified such member under 5 & 6 Will. 4, c. 76, secs. 28 and 53. *Lewis* v. *Carr*, *supra*. A person holding the appointment of chemist to a town council was elected a member of the council. Money was then due to him, and afterwards four pennyworth of oil was sold by his assistant to the council. He was held to be disqualified. *Nell* v. *Longbottom* (1894), 1 Q. B. 767; 63 L. J. Q. B. 490. The assignment of a contract with a corporation by a contractor before his election, without the privity of the

(2) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in— 45 & 46 Vict. c. 50.

(a) Any lease (*k*), sale, or purchase of land, or any agreement for the same; or

(b) Any agreement for the loan of money, or any security for the payment of money only (*l*); or

(c) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(d) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

(e) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862. 25 & 26 Vict. c. 89.

13.—(1) The term of office of a councillor shall be three years (*m*). Term of office of county councillors.

(2) On the ordinary day of election of councillors (*n*) *in every year one-third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election* (*o*).

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corporation, does not remove the disqualification, as his liability under the contract remains. *Cox* v. *Ambrose*, 60 L. J. Q. B. 114; 55 J. P. 23. Under 3 Geo. 4, c. 126, sec. 65, a trustee of a turnpike road who let his horses and carts for payment to a contractor with the trustees for work upon the road was held liable to penalties. *Towsey* v. *White*, 5 B. & C. 125. Under 55 Geo. 3, c. 137, sec. 6, a guardian who sold provisions to the master of a workhouse was held liable to penalties. *West* v. *Andrews*, 5 B. & Ad. 328.

Under sec. 34 of the *Elementary Act*, 1870 (33 & 34 Vict. c. 75), a member of a school board, who, previously to his election, printed for the returning officer documents relating to the election, which were subsequently paid by the school board, was held liable to penalties. *Tanfield* v. *Reynolds*, 39 J. P. 293. Under the Public Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 193, it was held that the interest in the contract continues so long as the contract exists. *Todd* v. *Robinson*, 14 Q. B. D. 739; 54 L. J. Q. B. 47. The brother of the defendant entered into a contract with a metropolitan vestry, and in order to carry it out borrowed money from the defendant, who, by way of security, took an assignment of the contract. *Held*, that he was disqualified under the Met. Man. Act, 1854, sec. 54, *ante*, for being elected or being a member of the vestry. *Hunnings* v. *Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416.

As to the liability of a member where a contract is entered into on his behalf without his authority, see *Miles* v. *McIlwraith*, 8 App. Cas. 120; 52 L. J. P. C. 17.

(*i*) **Employment.** A person is not disqualified under this section for being a member of a county council by reason only of his being appointed returning officer by that council, except where he has directly or indirectly by himself or his partner received any remuneration in respect of such appointment. *Coun. Counc.* (*Electns.*) *Act*, 1891, sec. 6, *post*, p. 122. *Quære* whether this does not place such a person in the same position as a mayor, and whether he is not still debarred from being elected at an election for which he himself is the returning officer. See *Reg.* v. *Owens*, 2 E. & E. 86; 28 L. J. Q. B. 316; *Reg.* v. *White*, L. R. 2 Q. B. 557; 36 L. J. Q. B. 267; *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; 36 L. J. Q. B. 18; *Reg.* v. *Morton* (1892), 1 Q. B. 39; 61 L. J. Q. B. 39; *Fanagan* v. *Kernan*, L. R. Ir. 8 C. P. 44.

Payment made to a medical practitioner in pursuance of the *Pub. Hlth.* (*London*) *Act*, 1891, with respect to the notification of infectious disease, does not disqualify him for serving as a member of the County Council, or a sanitary authority, or any other public body. *Ib.* sec. 57, *post*, p. 317.

(*k*) **Lease.** A letting for one day of premises for the purposes of a polling station is within this exception. *Nell* v. *Longbottom*, *supra*.

(*l*) **Security for payment of money.** A deed for the payment of money on a contingency, and which contains covenants ancillary to the security is within this sub-section. *Le Feuvre* v. *Lankester*, *supra*.

(*m*) **Term of office.** This term of three years is also fixed by the Loc. Govt. Act, 1888. Sec. 2 (2) (d).

(*n*) **The ordinary day of election of county councillors** is such day between the 1st and 8th March as the county council may fix, and, if no date is fixed, is March 8th. Coun. Counc. (Elections) Act, 1891, sec. 1 (1), *post*, p. 121.

(*o*) **One-third to go out of office.** The whole of the county councillors retire together every third year, on the ordinary day of retirement, viz., March 8th, reckoning the year 1892 as the first year of election and retirement. Coun. Counc. (Elections) Act, 1891, secs. 1 (2) and 4, *post*, p. 121.

45 & 46 Vict. c. 50.

(3) *The third to go out shall be the councillors who have been longest in office without re-election* (*p*).

Number, term of office, and rotation of county aldermen.

14.—(1) The aldermen shall be fit persons elected by the council (*q*).

(2) The number of aldermen shall be one-*third* (*r*) of the number of councillors.

(3) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor (*s*).

(4) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor (*t*).

(5) The term of office of an alderman shall be six years (*u*).

(6) On the ordinary day of election of aldermen (*x*) in every third year one-half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7) The half to go out shall be those who have been aldermen for the longest time without re-election.

Qualification, term of office, salary, of chairman of county council.

15.—(1) The mayor (*y*) shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such (*z*).

(2) An outgoing alderman is eligible.

(3) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration (*a*).

(4) He may receive such remuneration as the council think reasonable (*b*).

(5) [*Not applicable to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16) (b), *ante.*]

(6) [*Saving for mayors of boroughs named in schedules to Mun. Corp. Act*, 1835.]

16. [*Power of mayor to appoint deputy. Not applied to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16), *ante.*]

Officers of county council.

Officers of County Council.

17. [*The town clerk and deputy. Not applied to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16), *ante.*]

The treasurer.

18.—(1) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough (*c*).

(*p*) **One-third to go out of office.** See note (*o*) on page 81.

(*q*) **Election of aldermen.** For provisions regulating the election of county aldermen, see sec. 60, *post*. County aldermen cannot as such vote in the election of county aldermen. *Loc. Govt. Act*, 1888. Sec. 2 (2) (c), *ante*.

(*r*) **Number of aldermen.** In the administrative county of London the number of county aldermen is not to exceed one-sixth of the county councillors, the actual number being 19. Loc. Govt. Act, 1888, sec. 40 (5), and note thereto, *ante*.

(*s*) **Qualified to be a councillor.** As to what persons are qualified to be councillors, see secs. 9, 11, and 12, *supra*, and notes thereto.

(*t*) **Vacates his office.** This creates a "casual vacancy," which is filled in the manner provided by secs. 40 and 66, *post*.

(*u*) **Term of office of alderman.** When elected to fill a casual vacancy, an alderman goes out of office at the time when the person whose place he is elected to fill would regularly have gone out of office. Sec. 40 (1), *post*.

(*x*) **The ordinary day of election of county aldermen** is March 16th, or such other day within ten days after the ordinary day of retirement of county councillors as the county council may fix. *Coun. Counc.* (*Electns.*) *Act*, 1891, sec. 1 (3), *post*, p. 121.

(*y*) **Mayor.** In the county council the chairman is substituted for the mayor. *Loc. Govt. Act*, 1888, sec. 2 (5), *ante*. He is elected annually on March 16th, or such other day within ten days after the ordinary day of retirement of county councillors as the county council may fix. *Coun. Counc.* (*Electns.*) *Act*, 1891, sec. 1 (3) *post*, p. 121.

(*z*) **Qualified to be such.** As to what persons are qualified to be county councillors and county aldermen, see secs. 9, 11, 12, and 14, *ante*, and notes thereto.

(*a*) **The required declaration** is prescribed by sec. 35 and sched. 8, *post*.

(*b*) **Remuneration of mayor.** A corporation is not entitled to make a colourable addition to the salary of the mayor, merely that the addition may be applied in indirectly making payments which would not be justified if made directly. *Att.-Gen.* v. *Cardiff* (*Mayor, &c., of*), 10 T. L. R. 420. See also *Att.-Gen.* v. *Blackburn Corporation*, 57 L. T. (N. S.) 385.

(*c*) **Treasurer.** The London County Council appoint their treasurer under this section. See Loc. Govt. Act, 1888, sec. 75 (16) (e), and note thereto, *ante*.

(2) The treasurer shall hold office during the pleasure of the council. 45 & 46 Vict. c. 50.

(3) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4) The offices of town clerk and treasurer shall not be held by the same person.

Other county officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough (*d*), or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed (*e*).

Security by and remuneration of officers.

20. The council shall require every officer appointed by them to give such security (*f*) as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable (*g*).

Accountability of officers.

21.—(1) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after (*h*) his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act (*i*) in connection with his office, shewing the amount due from each.

(2) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3) If any such officer—

(a) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(b) After three days' notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct;

(*d*) **Appoint officers.** As to the appointment of the clerk and deputy clerk of the county council, see Loc. Govt. Act, 1888, sec. 83 (11), *ante*. Officers appointed by the county council apparently hold office "during the pleasure" of the council, notwithstanding that these words are omitted in this section, though they are expressly stated in regard to the appointment of the town clerk and deputy and the treasurer in the two preceding sections. See *Smyth* v. *Latham*, 9 Bing. 692; and *Hill* v. *The Queen*, 8 Moore P. C. C. 138.

(*e*) **Discontinue appointment.** The power to discontinue the appointment of "existing" officers transferred to the county council is subject to the provisions of the Loc. Govt. Act, 1888, secs. 118 and 119, *ante*. As to what officers may be discontinued under this section, and what amounts to the discontinuance of an appointment, see *Hall* v. *Swansea (Mayor, &c., of)*, 5 Q. B. 526; 13 L. J. Q. B. 107.

(*f*) **Security.** The alteration of an appointment from an annual office to an office held during pleasure, does not discharge the surety. *Dartmouth (Mayor, &c., of)* v. *Silby*, 7 E. & B 97; 26 L. J. Q. B. 90; *Berwick (Mayor, &c., of)* v. *Oswald*, 5 H. L. Cas. 856; 25 L. J. Q. B. 383. Mere laches of the obligee, or a mere passive acquiescence by the obligee in acts which are contrary to the conditions of a bond, are not sufficient of themselves to relieve the sureties. *Durham (Mayor, &c., of)* v. *Fowler*, 22 Q. B. D. 394; 58 L. J. Q. B. 246. A surety for a contractor is not discharged from liability, although his position has been altered by the conduct of the employer, where that conduct has been caused by a fraudulent act of omission of the contractor against which the surety has, by the contract of suretyship, guaranteed the employer. *Kingston-upon-Hull (Mayor, &c., of)* v. *Harding* (1892), 2 Q. B. 494; 62 L. J. Q. B. 55.

(*g*) **Remuneration of officers.** The county council pay to the clerk of the council such salary as they from time to time fix. *Loc. Govt. Act*, 1888, sec. 83 (11), *ante*. As to payment over and above his fixed salary of fees and expenses to an officer for performing additional duties imposed on him by statute, see *Reg.* v. *Allday*, 7 E. & B. 799, and cases therein cited at pp. 801 and 802; 26 L. J. Q. B. 292.

(*h*) **Within three months after.** See note to sec. 107 of the Met. Man. (Amend.) Act, 1862, *post*.

(*i*) **For the purposes of this Act.** Or for the purposes of the Loc. Govt. Act, 1888. *Ib.* sec. 75, *ante*.

45 & 46 Vict. c. 50.

a court of summary jurisdiction (*k*) having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause (*l*).

Meetings and Proceedings of Council; Committees.

Meetings of council; appointment of committees, minutes, &c.

22.—(1) The rules in the *second schedule* (*m*) shall be observed.

(2) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees (*n*); but the acts of every such committee shall be submitted to the council for their approval (*o*).

(3) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest (*p*).

(*k*) **Court of summary jurisdiction.** This expression means any justice or justices of the peace, or other magistrate, by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether acting under those Acts or under any other Act by virtue of his commission, or under the common law. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 13 (11). The Lord Mayor and any alderman of the City of London, and any metropolitan police magistrate, when sitting in any courthouse or place at which he is authorised to do alone any act authorised to be done by more than one justice of the peace, shall be deemed to be a court of summary jurisdiction. Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), sec. 20 (10).

(*l*) **Proceeded against summarily.** It was held that similar provisions of the repealed Mun. Corp. Act, 1835 (5 & 6 Will. 4, c. 76), sec. 60, did not exclude an action for breach of duty in not delivering up matters and things when required. *Lichfield (Mayor, &c., of)* v. *Simpson*, 8 Q. B. 65; 15 L. J. Q. B. 78.

(*m*) **Rules in second schedule.** In regard to the meetings and proceedings of the London County Council, the provisions contained in the schedule to the London Coun. Counc. (Genl. Powers) Act, 1893 (56 & 57 Vict. ch. ccxxi.), *post*, p. 114, are substituted for the provisions contained in the second schedule of this Act, and subject to the provisions of the said schedule the Council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same. *Ib.* sec. 10.

(*n*) **Committees.** The county council is required to appoint a finance committee by the Loc. Govt. Act, 1888, sec. 80 (3), *ante*; and is empowered to delegate to committees any powers and duties transferred to it by that Act; *ib.* sec. 28 (2); except the power of making a rate or borrowing money. *Ib.* secs. 28 (3) and 81 (3). For further provisions regulating the proceedings of committees of the council, see *ib.* sec. 82. The committees may meet at such place either within or without their county as the county council direct; *ib.* sec. 75 (21); or as the committee direct. *Ib.* sec. 82 (1). The powers conferred on any committee must be exercised by them acting in concert, and it is not competent to such committee to apportion amongst themselves the duties delegated to them. *Cook v. Ward*, L. R. 2 C. P. D. 255; 46 L. J. C. P. 554. The body appointing a committee does not deprive itself of the powers delegated to the committee, and may exercise such powers at any time without previously revoking the authority of the committee. *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120.

(*o*) **Submitted to council for approval.** Standing joint committees of the county council and quarter sessions are not required to report their acts and proceedings to the council; L. G. Act, 1888, sec. 75 (16) (f), *ante*; and though all other committees must report their proceedings to the county council, their acts and proceedings are not required, to the extent to which the county council directs, to be submitted to the council for approval. *Ib.* sec. 82 (2). A contract which is required to be under seal, entered into by a committee, and not signed on behalf of the council by any person authorised under seal to do so, is not binding on either party until it has been ratified by the council under seal. See *Oxford (Mayor, &c., of)* v. *Crow* (1893), 3 Ch. 535; 69 L. T. (N. S.) 228, and cases there cited.

(*p*) **Pecuniary interest.** As to what will constitute a pecuniary interest, see sec. 12 (1) (c), and note thereto, *ante*. Where by resolution of the council under sec. 15 (4), *ante*, a salary is attached to the office of mayor or chairman, a candidate for that office is disqualified for voting for himself. *Nell* v. *Longbottom*, *ante*, p. 80. There is

(4) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body. 45 & 46 Vict. c. 50.

(5) A minute of proceedings at a meeting of the council (*q*), or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(6) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

Byelaws (*r*).

23.—(1) The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough (*s*), and for preven- Power of council to make byelaws.

apparently no penalty for an infringement of this sub-section; and it would appear that such infringement would not be a ground of amotion. *Reg.* v. *Ryde (Mayor, &c., of)*, 28 L. T. (N. S.) 629. *Quære*, whether the power of amotion for reasonable cause, such as corrupt or dishonest conduct, still exists. *Booth* v. *Arnold* (1895), 1 Q. B. 571, *per* Lopes, L. J., at p. 579; 64 L. J. Q. B. 443.

(*q*) **Minutes of proceedings** at every meeting of the London County Council are required to be drawn up and printed, and signed at the same or next ensuing meeting by the chairman of the meeting at which the minutes are signed. Lon. Coun. Counc. (Genl. Powers) Act, 1893, schedule, *post*, p. 115. They are to be open to the inspection of an elector on payment of one shilling. Sec. 233, *post*. Any one forging the signature to any minute, or knowingly tendering in evidence a minute with a forged signature attached, is liable to imprisonment with hard labour for two years. Sec. 235, *post*.

(*r*) **Byelaws**. The Loc. Govt. Act, 1888, sec. 16, *ante*, expressly confers on county councils the same powers of making byelaws in relation to their county, as the council of a borough have in relation to their borough under the present section.

Expressions used in byelaws made since 1889, unless the contrary appears, have the same respective meanings as in the Act conferring the power of making them. Interpretation Act, 1889 (52 & 53 Vict. c. 63).

"A byelaw has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large." *Hopkins* v. *Mayor of Swansea*, 4 M. & W. 62, *per* Lord Abinger, at p. 640. If the byelaw be entire, and one part be void, it is void altogether. *Dowdell* v. *Oxford (University)*, 2 Vent. 34; *Strickland* v. *Hayes*, *infra*. But if its parts be distinct from each other and separately entire, it may be good as to part and bad as to part. *Rex* v. *Faversham*, 8 T. R. 352; *Lee* v. *Wallis*, 1 Ken. 295; *Reg.* v. *Lundie*, 31 L. J. M. C. 157; 5 L. T. (N. S.) 830. The validity of a byelaw may be tested and tried in an action to recover the penalty, or on a prosecution in a court of summary jurisdiction. *Piper* v. *Chappell*, 14 M. & W. 624; *Reg.* v. *Wood*, *post*, p. 358; *Macdonald* v. *Lochrane*, 51 J. P. 629; *Pearson* v. *Whitfield*, 52 J. P. 708.

Every byelaw must be reasonable, and must be consistent with and not repugnant to the general laws and statutes of the realm, and must not be contrary to, nor exceed the powers conferred by, the charter or statute under which the persons making it act. See 5 Co. 63; *Reg.* v. *Wood*, *supra*; *Reg.* v. *Cuthush*, 4 Burr. 2204; *Hoblyn* v. *Rex*, 2 Bro. P. C. 329; *Calder Navigation Co.* v. *Pilling*, 14 M. & W. 76; 14 L. J. Ex. 223; *Brown* v. *Holyhead Loc. Bd.*, 1 H. & C. 601; 32 L. J. Ex. 25; *Martin* v. *Clark*, 62 L. J. M. C. 178; *Strickland* v. *Hayes*, *infra*. See also *Slattery* v. *Naylor*, 13 App. Cas. 446; 57 L. J. P. C. 73, for general discussion on the subject of unreasonableness.

(*s*) **Good rule and government.** The council has no power to make byelaws regulating the use of bicycles, tricycles, and velocipedes. See Loc. Govt. Act, 1888, sec. 85, *ante*, which provides regulations for their use.

All rights of exclusive trading are abolished. See sec. 247, *post*. A statutory power conferred on a public body to make byelaws for regulating trade does not, in the absence of an express power of prohibition, authorise such public body to issue a byelaw making it unlawful to carry on a lawful trade in a lawful manner. *Toronto Municipal Corporation* v. *Virgo* (1896), A. C. 88; 65 L. J. P. C. 4. But the council may make byelaws for the regulation, though not in restraint, of lawful trade. A byelaw which prohibited the keeping of swine within a borough was held to be bad. *Everett* v. *Grapes*, 3 L. T. (N. S.) 669; 25 J. P. 644.

A byelaw prohibiting parents to allow any child under twelve to sell articles in the

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tion and suppression of nuisances (*t*) not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines (*u*), not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2) Such a byelaw shall not be made unless at least two thirds of the whole number of the council are present (*x*).

(3) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall (*y*).

(4) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State (*z*): and if within those forty days the Queen, with the advice of Her Privy Council, disallows the byelaw or part thereof, the byelaw or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the byelaw shall not come into force, and in that case the byelaw shall not come into force until after the expiration of that enlarged time.

(5) Any offence against such a byelaw may be prosecuted summarily (*a*).

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street after 10 p.m. is bad. *Macdonald* v. *Lochrane*, 51 J. P. 629. As to byelaws against playing instruments in the streets, see *Reg.* v. *Powell*, 48 J. P. 470; 51 L. T. (N. S.) 92; *Johnson* v. *Croydon (Mayor, &c., of)*, 16 Q. B. D. 708; 55 L. J. M. C. 117; *Munro* v. *Watson*, 51 J. P. 660; 57 L. T. (N. S.) 366; *Booth* v. *Howell*, 53 J. P. 678; against collecting a crowd by shouting, *Phillips* v. *Canham*, 53 J. P. 678; against erecting booths without a licence, *Elwood* v. *Bullock*, *post*, p. 358; against playing football in the streets, *Pearson* v. *Whitfield*, 52 J. P. 708. A byelaw requiring vehicles to carry lights after dark is good. *Walker* v. *Stretton*, 60 J. P. 313; 12 T. L. R. 363; *Williams* v. *Groves*, 12 T. L. R. 450. A byelaw that "no person shall in any street or public land, or on land adjacent thereto, sing or recite, or use any profane or obscene language" is invalid in its entirety. *Strickland* v. *Hayes* (1896), 1 Q. B. 290; 65 L. J. M. C. 55. But a byelaw that "no person shall in any house, building, garden, land, or other place abutting on or near to any street or public place, make use of any violent, abusive, profane, or obscene language, gesture, or conduct to the annoyance of any person in such street or public place" is valid. *Mantle* v. *Jordan* (1897), 1 Q. B. 248; 66 L. J. Q. B. 224. A byelaw that no person shall, to the annoyance or disturbance of residents or passengers keep or manage a shooting gallery, roundabout, &c., in any street or public place, or on land adjoining or near to such street or public place, is good. *Teale* v. *Harris*, 60 J. P. 744; 13 T. L. R. 15. A byelaw against betting in any street or public place is good. *Burnett* v. *Berry* (1896), 1 Q. B. 641; 65 L. J. M. C. 118; *Godwin* v. *Walker*, 60 J. P. 308; 12 T. L. R. 367.

(*t*) **Nuisances.** To expose for sale, or to have possession of, with intent to sell, for human consumption, things unfit for the food of man, is a nuisance at common law. *Shillito* v. *Thompson*, *infra*. It is also a statutable offence punishable summarily. Pub. Hlth. (London) Act, 1891, sec. 47 *post*, p. 309. A byelaw under this section cannot create any new criminal offence, and if it prohibits a lawful act, irrespective of whether such act causes a nuisance or not, it is unreasonable and *ultra vires*. *Johnson* v. *Croydon (Mayor, &c., of)*, *supra*; *Strickland* v. *Hayes*, *supra*. But see the remarks of Ld. Russell of Killowen, C. J., in *Burnett* v. *Berry*, *supra*.

(*u*) **Fines.** A byelaw, without express statutory power being given for the purpose, cannot be enforced by forfeiture of goods, but only by a pecuniary penalty. *Kirk* v. *Nowill*, 1 T. R. 118. But a byelaw against exposing for sale unsound articles of food, which imposed a pecuniary penalty, and required the destruction of the unsound articles, was held to be good. *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. M. C. 18. The byelaw must be certain as to the penalty imposed. A byelaw imposing a penalty of such sum as the masters, wardens, &c., should assess, not exceeding forty shillings, is bad. *Wood* v. *Searl*, Bridgm. 139 e. But a byelaw which fixes a maximum penalty, with power of mitigation to an amount not below a stated minimum sum, is good. *Piper* v. *Chappell*, *supra*.

(*x*) **Two-thirds of Council present.** If two-thirds of the whole number of the County Council are present, a majority of those who vote will suffice. London Coun. Counc. (Genl. Powers) Act, 1893, schedule, rule 8, *post*, p. 115.

(*y*) **Fixed on town hall.** See sec. 232, *post*.

(*z*) **Sent to Secretary of State.** This sub-section does not apply to byelaws for the suppression of nuisances. See sub-sec. (6) and note (*b*), *infra*.

(*a*) **Prosecuted summarily.** See sec. 219, *post*. The council has no jurisdiction to cause summonses to be issued to offenders to appear before them and answer complaints of offences against byelaws. *Wiseman* v. *Corporation of Manchester*, 3 T. L. R. 12. On a prosecution under a byelaw against making noises in the streets to the annoyance of the inhabitants, it is not necessary to prove that more than one inhabitant has in fact been annoyed. *Innes* v. *Newman* (1894), 2 Q. B. 292; 63 L. J. M. C. 198.

(6) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875 (*b*); and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances. 45 & 46 Vict. c. 50. 38 & 39 Vict. c. 55.

24. The production of a written (*c*) copy of a byelaw made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal (*d*) shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy, of the byelaw having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the byelaw. Evidence of byelaws.

Accounts and Audit.

25. [*The borough auditors. Not applied to county council. Loc. Govt. Act*, 1888, *sec.* 16 (b), *ante.*]

26. (*e*) The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act. Half-yearly accounts of treasurer.

27. (*e*) (1) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the *borough auditors* (*f*), and they shall audit them. Audit and publication of treasurer's accounts.

(2) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year (*g*).

28. (*e*) (1) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year (*h*). Returns to Local Government Board.

(*b*) **Public Health Act, 1875.** Sec. 187 enacts: "Byelaws made by the council of any borough under the provisions of sec. 90 of the Mun. Corp. Act, 1835 (5 & 6 Will. 4, c. 76), for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to byelaws shall apply to the byelaws so made as if they were made under this Act." This section must be construed as if sec. 23 of the Mun. Corp. Act. 1882, were herein referred to instead of sec. 90 of the Mun. Corp. Act, 1835. The other provisions of the Pub. Hlth. Act, 1875, relating to byelaws, are contained in secs. 182—186, and are set out in sched. 1 of the Pub. Hlth. (London) Act, *post*, p. 358.

(*c*) "**Written**" includes "printed" (sec. 7, *ante*, and *Loc. Govt. Act*, 1888, sec. 99, *ante*); and writing includes printing, lithography, photography, and other modes of representing or reproducing words in a visible form. *Interpretation Act*, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*d*) **Corporate seal.** For the punishment for forging the seal or signature to a byelaw, or tendering in evidence any such document with a false or counterfeit signature, see sec. 235, *post.*

(*e*) **Sections 26, 27, and 28.** The provisions of these sections extend to the accounts of the county council, their treasurer and officers. *Loc. Govt. Act*, 1888, sec. 71 (2). But these provisions must be modified so as to adapt them to the requirements of that Act, which enacts that the local financial year for the purposes of that Act shall be twelve months ending March 31st. *Ib.* sec. 73.

(*f*) **Borough auditors.** The accounts of the county council are submitted to and audited by district auditors appointed by the Loc. Govt. Bd. Loc. Govt. Act, 1888, sec. 71 (3), *ante.*

(*g*) **Abstract of accounts.** Any member of the council may inspect and take abstracts from these accounts without payment, and the abstract of accounts is open to any ratepayer, who is entitled to a copy on payment of a reasonable sum. Sec. 233 (3) (4), *post.* The clerk to the county council is also required to publish an abstract of the accounts in one or more of the local newspapers. Loc. Govt. Act, 1888, sec. 71 (3), *ante*; Pub. Hlth. Act, 1875, sec. 247 (10), *post*, vol. ii. tit. "*Audit.*"

(*h*) **Return to Loc. Govt. Bd.** The provisions respecting the return to the Loc. Govt.

45 & 46 Vict. c. 50.

(2) The return shall be made for the financial year ending on the *twenty-fifth* of March (*i*), or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4) The return shall be sent to the Local Government Board within one month after (*k*) the completion of the audit for the second half of each financial year.

(5) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

(6) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

29. [*Revising assessors in non-parliamentary boroughs. Rep. by County Electors Act*, 1888, *sec.* 4 (1) (a), *post, vol. ii.*]

30. [*Proceedings for division of borough into wards or alteration of wards. Not applied to county council. Local Government Act*, 1888, *sec.* 75 (16) (b), *ante.*]

Supplemental and Exceptional Provisions.

Occupation of part of house.

31. (*l*) In and for the purposes of this Act—

(a) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(b) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

Claim by occupier to be rated.

32.—(1) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof (*m*), and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate (*n*).

(2) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

Bd. are extended to the return to that Board of a printed copy of the abstract of the county council's accounts, by the Loc. Govt. Act, 1888, sec. 71 (2), *ante*.

(*i*) **Financial year.** The financial year for county councils is the twelve months ending March 31st. Loc. Govt. Act, 1888, sec. 73, *ante*.

(*k*) **Within one month after.** See note to sec. 107 of the Met. Man. Act, 1862, *post*.

(*l*) **Section 31** is almost identical in terms with part of sec. 5 of the Parly. and Mun. Regn. Act, 1878 (41 & 42 Vict. c. 26). It is supplemental to sec. 9 (2) (b) *ante*, which see, and notes thereto. The section is extended to so much of every county as is not comprised within the limits of a municipal borough, by the County Electors Act, 1888, sec. 2 (2), *post*, vol. ii. tit. "*County Electors.*"

(*m*) **Occupier claims to be rated.** This section does not revive personal payment of rates as a necessary qualification for the municipal franchise. *Semble*, that the object of the section is to enable a tenant to be rated, and to pay or tender the rates himself, in order to avoid being disfranchised, in case his landlord is not rated, or does not pay the rates. *Marsh* v. *Estcourt*, *ante*, p. 77. See also *Unwin* v. *McMullen*, *ante*, p. 77, and sec. 9 (2) (d) (e) *ante*, and notes thereto.

(*n*) **Occupier's name on rate book.** The overseers are required in all cases, whether the owner is liable or not, to enter in the occupiers' column of the rate book the name of the occupier of every rateable hereditament, and such occupier is deemed to be rated for any parliamentary qualification or franchise; and if the overseer omits or mistakes the name of the occupier, the occupier shall, in spite of such omission, and although he has made no claim to be rated, be entitled to every qualification and franchise depending on rating, in the same manner as if his name had not been omitted. Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), sec. 19. This provision is not deemed to apply exclusively to where the landlord has agreed or been ordered to be rated, but is of general application. Parly. & Mun. Registration Act, 1878 (41 & 42 Vict. c. 26), sec. 14.

45 & 46 Vict. c. 50.

Rules as to qualification of burgess on succession, &c.

33(*o*).—(1) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3) Where by law a borough rate is payable by instalments(*p*), payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4) A person shall not be disentitled to be enrolled as a burgess by reason only—

(a) That he has received medical or surgical assistance(*q*) from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority; or

(b) That his child has been admitted to and taught in any public or endowed school(*r*).

Obligation to accept office or pay fine.

34.—(1) Every qualified person(*s*) elected to a corporate office(*t*), unless exempt under this section or otherwise by law(*u*), either shall accept the office by making and subscribing the declaration required by this Act(*x*) within *five days* after(*y*) notice of election(*z*), or shall, in lieu thereof, be liable to pay to

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(*o*) **Section 33** is extended to so much of every county as is not comprised within the limits of a municipal borough, by the County Electors Act, 1888, sec. 2 (2), *post*, vol. ii. See also sec. 9 *ante*, and note thereto.

(*p*) **Payable by instalments.** The overseers who make the poor rate for a period exceeding three months may declare that the same shall be paid by instalments. Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), sec. 15.

(*q*) **Medical or surgical assistance.** See *Honeybone* v. *Hambridge*, *ante*, p. 78.

(*r*) **Public or endowed school.** Payment by the guardians of the school fees of a child whose parents are not paupers, but who are too poor to pay them, does not deprive such parents of any franchise, right, or privilege, or subject them to any disability or disqualification. Elementary Education Act, 1876 (39 & 40 Vict. c. 79), sec. 10.

(*s*) **Qualified person.** See secs. 11, 12, 14, and 15, *ante*, and sec. 39, *post*.

(*t*) **Corporate office** is defined by sec. 7 (1), *ante*.

Sections 34, 35, 36 and 37 are applied also to the office of vestryman and auditor by the Loc. Govt. Act, 1894, sec. 48 (4), *post*, and are modified and adapted for that purpose by the Vestrymen and Auditors (London) Election Order, 1897, sched. 5, *post*, p. 583.

(*u*) **Exempt otherwise by law.** In addition to the persons exempt from serving under this section, the following are also exempt:—Registrars of births, deaths, and marriages, *Births and Deaths Registration Act*, 1837 (1 *Vict. c.* 22, *sec.* 18); Officers of the post office, *Post Office* (*Management*) *Act*, 1837 (1 *Vict. c.* 33, *sec.* 12); registered medical practitioners, *The Medical Act*, 1858 (21 *&* 22 *Vict. c.* 90, *sec.* 35); officers of Customs, *The Customs Consolidation Act*, 1876 (39 *&* 40 *Vict. c.* 36, *sec.* 9); inspectors of factories, *The Factory and Workshops Act*, 1878 (41 *&* 42 *Vict. c.* 16, *sec.* 67); registered dentists, *The Dentists Act*, 1878 (41 *&* 42 *Vict. c.* 33, *sec.* 30); men in the Army Reserve, *Reserve Forces Act*, 1882 (45 *&* 46 *Vict. c.* 48, *sec.* 7); Commissioners and Officers of Inland Revenue, *Inland Revenue Regulation Act*, 1890 (53 *&* 54 *Vict. c.* 21, *sec.* 8); military, naval, and marine officers, on full or half-pay, and officers and others employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments. Sec. 253, *post*.

(*x*) **Declaration.** The form of declaration and the persons before whom it is to be made are prescribed by sec. 35 and the eighth schedule, *post*. Persons enabled by law to make an affirmation instead of taking an oath, are not liable to any fine for refusing on conscientious grounds to accept office or make the declaration. Sec. 36 (3), *post*.

(*y*) **Within five days after.** Now any time within three months in the case of any person elected to a corporate office in a county. *County Councils* (*Electns.*) *Act*, 1891, sec. 5, *post*.

(*z*) **Notice of election** means regular notice, either by being actually present when

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the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or . . . fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine(*a*).

(2) If there is no byelaw determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds(*a*).

(3) The persons exempt under this section are—

(a) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(b) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4) A fine payable under this section shall be recoverable summarily(*b*).

Declaration on acceptance of office.

35. A person elected to a corporate office(*c*) shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the eighth schedule, act in the office(*d*) except in administering that declaration(*e*).

Fine on resignation, &c.

36.—(1) A person elected to corporate office(*c*) may at any time(*f*) by writing signed by him and delivered to the town clerk, resign the office(*g*), on payment of a fine provided for non-acceptance thereof(*h*).

(2) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall(*i*), and the office shall thereupon become vacant.

(3) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

Re-eligibility of office holders.

37. A person ceasing to hold a corporate office(*c*) shall, unless disqualified(*k*) to hold the office, be re-eligible.

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it is announced, or by being apprised of the fact by some official authority. *Reg.* v. *Preece*, 5 Q. B. 94 ; 12 L. J. Q. B. 335.

(*a*) **Amount of fine.** The amount of the penalty fixed by the byelaw must be certain ; but a byelaw inflicting a certain penalty, with a power of mitigation to any amount not below a stated minimum, is good. *Piper* v. *Chappell*, 14 M. & W. 624.

The London County Council has fixed one pound as the amount of the fine for non-acceptance or resignation of office. Lon. Coun. Counc. Standg. Orders, 1896.

(*b*) **Fine recoverable summarily.** See note to sec. 227 of the Metrop. Man. Act, 1855, *post*, as to summary proceedings. At least *primâ facie* evidence of qualification must be produced ; and if in fact the party was not qualified, he is not liable to the penalty, and a conviction will be invalid. *Reg.* v. *Richmond*, 26 J. P. 771 ; 11 W. R. 65.

(*c*) **Corporate office.** See note (*t*) on page 89.

(*d*) **Shall not act in office.** The penalty for acting without having made the declaration is a fine not exceeding fifty pounds. Sec. 41, *post*.

(*e*) **Administering declaration.** Sec. 239, *post*, empowers the clerk and members of the council to administer this declaration. A councillor who administers the declaration without any protest, knowing that the person subscribing it is disqualified, cannot be heard as a relator on a motion for a *quo warranto* to impeach the validity of the election. *Reg.* v. *Greene*, 2 Q. B. 460 ; 11 L. J. Q. B. 107.

(*f*) **At any time.** This means at any time when he is capable of holding office. Therefore a person who becomes disqualified under sec. 39, *post*, ceases to hold office, and is therefore incapable of resigning it. *Hardwick* v. *Brown*, L. R. 8 C. P. 406, 37 J. P. 407 ; *Futcher* v. *Saunders*, 49 J. P. 424.

(*g*) **Resign the office.** The resignation is completed by the delivery of the writing to the town clerk, and the payment of the fine, and cannot afterwards, even with the assent of the corporation, be withdrawn. *Reg.* v. *Mayor of Wigan*, L. R. 14 Q. B. D. 908 ; 54 L. J. Q. B. 308.

(*h*) **Fine for non-acceptance.** See sec. 34 (1) and (2), and notes thereto, *supra*. *Semble*, that a person who gives up one municipal office to fill another is not liable to pay a fine. *Reg.* v. *Mayor of Bangor*, 18 Q. B. D. 349 ; *per* Lindley, L. J., at p. 366 ; 56 L. J. Q. B. 326.

(*i*) **Fixed on town hall.** See sec. 232, *post*.

(*k*) **Unless disqualified.** See secs. 11, 12, 14, and 15, *ante*, and sec. 39, *post*, and notes thereto.

45 & 46 Vict. c. 50.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years(*l*).

Mayor and aldermen to continue members of council.

Avoidance of office by bankruptcy or absence.

32 & 33 Vict. c. 71.

39.—(1) If the mayor, or an alderman or councillor—

(a) Is declared bankrupt(*m*), or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise(*n*); or

(b) Is (except in case of illness) continuously absent from the borough, being *mayor, for more than two months*, or, being alderman or councillor, for more than *six* months(*o*):

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall(*p*), and the office shall thereupon become vacant(*q*).

(3) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy,

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(*l*) **During respective offices.** County councillors go out of office every three years (*Loc. Govt. Act*, 1888, sec. 2 (2) (d), *ante*), on March 8th (*Coun. Counc. (Electns.) Act*, 1891, sec. 1 (2), *post*, p. 121), and the chairman and aldermen are elected for one year (sec. 15 (3) and *ante*) and six years (sec. 14 (5) *ante*) respectively, on March 16th, or on such other day, within ten days after March 8th, as the county council may fix. *Coun. Counc. (Electns.) Act*, 1891, sec. 1 (3). The effect of the present section appears to be that the chairman and aldermen hold office for one and six years respectively, from the day of their election, unless elected to fill a casual vacancy.

(*m*) **Bankrupt.** Where a debtor is adjudged bankrupt he is disqualified for being elected to or holding the office of mayor, alderman, or councillor (Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sec. 32 (1)); but the disqualification ceases when the adjudication is annulled, or the bankrupt obtains his discharge, with a certificate that the bankruptcy was caused by misfortune, without any misconduct on his part. *Ib.* sec. 32 (2). That section is not retrospective. *Bourke* v. *Nutt* (1894), 1 Q. B. 725; 63 L. J. Q. B. 497. No disqualification under the foregoing section is to exceed five years from the date of discharge; and the disqualifications arising by virtue of that section include disqualification for being elected to, or holding or executing, the office of a member of a county council. Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), sec. 9.

(*n*) **Composition with creditors.** The Bankruptcy Act, 1869, is repealed, and compositions and arrangements with creditors are provided for by sec. 3 of the Bankruptcy Act, 1890. Where an alderman made a composition with his creditors, but executed no composition deed, and no composition proceedings were taken under the *Bankruptcy Act*, 1869, he was held not disqualified, and an injunction was granted restraining the corporation from declaring his office void. *Aslatt* v. *Corporation of Southampton*, 16 Ch. D. 153; 50 L. J. Ch. 31. Under somewhat differently worded provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sched. 2, rr. 5, 65, where a person had assigned all his property to a trustee for the benefit of those of his creditors who should sign the deed of assignment, no sum being mentioned in it as a composition to be paid on the debts due, and the creditors signing the deed thereby discharged him from all debts due, it was held that such person was not disqualified for being elected as a member of a local board. *Reg.* v. *Cowan*, 18 Q. B. D. 269; 56 L. J. M. C. 33.

(*o*) **Absence.** A chairman or deputy of a county council is not disqualified as such by reason of absence (Loc. Govt. Act, 1888, sec. 75 (16) (c), *ante*); and twelve months is substituted for six months as the period of absence which disqualifies county aldermen and county councillors. *Ib.* sec. 75 (14).

(*p*) **Fixed on town hall.** See sec. 232, *post*.

(*q*) **Become vacant.** In the case of bankruptcy of a person holding the office of, *inter alia*, mayor, alderman, or councillor, his office thereupon becomes vacant (*Bankruptcy Act*, 1883, sec. 34); and it would not, therefore, be necessary for the council to declare the office vacant. But in other cases the requirements of this sub-section must be strictly complied with, and until they have been it would seem that the office is not vacant, *Reg.* v. *Oxford (Mayor, &c., of)*, 6 A. & E. 963; *Reg.* v. *Leeds (Mayor, &c., of)*, 7 A. & E. 963; *Hardwick* v. *Brown*, *ante*, p. 90; *Reg.* v. *Welchpool (Mayor, &c., of)*, 35 L. T. N. S. 594; though a person disqualified under the preceding sub-section is incapable either of resigning or of filling his office. *Hardwick* v. *Brown*, *supra*. See also *Richardson* v. *Methley School Board*, *post*, p. 538.

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cease on his obtaining his order of discharge (*r*), and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.

(4) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office (*s*), recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

Filling of casual vacancies.

40.—(1) On a casual vacancy (*t*) in a corporate office (*u*), an election shall be held (*x*) by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council (*y*).

(3) Non-acceptance of office by a person elected creates a casual vacancy.

Penalty on unqualified person acting in office.

41.—(1) If any person acts in a corporate office (*u*) without having made the

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(*r*) **Cease on order of discharge.** A person so disqualified is not eligible for subsequent election until the disqualification has ceased. *Hardwick* v. *Brown* and *Futcher* v. *Saunders*, *ante*, p. 90. In addition to his discharge the bankrupt must obtain a certificate that his bankruptcy was caused by misfortune, otherwise the disqualification does not cease for five years after his discharge. See note to sub-sect. (1) (a), and *Reg.* v. *Welchpool*, *supra*.

(*s*) **Fine.** See sec. 34, *ante*, and notes thereto.

(*t*) **Casual vacancy.** Where a councillor had, during his term of office, been omitted from the burgess list for alleged non-payment of rates, the court refused to issue a *mandamus* to the mayor to proceed to a new election, and held that the office remained full *de facto*, and that the vacancy must be first ascertained by a judgment on a *quo warranto* information. *Reg.* v. *Phippen*, 7 A. & E. 966. It would appear that the proceedings directed by this section can only be taken where the vacancy is fully established by judgment of ouster, or by due course of law under sec. 39, *ante* (*Ib.* at p. 971); or by non-acceptance of office under secs. 34 and 40 (3); or resignation under sec. 36; or death; or in the case of amotion by the corporate body for due cause. But *Quære* whether the power of amotion still exists in the case of municipal corporations. In *Booth* v. *Arnold* (1895), 1 Q. B. 571 (C. A.), which was decided on another point, Lord Esher, M. R., and Rigby, L. J., declined to express an opinion, but Lopes, L. J., held that the power of amotion from a corporate office, for reasonable cause, such as corrupt or dishonest conduct, is incident to every corporation, unless it has been taken away by statute, and still exists in the case of an alderman of a borough subject to this Act. As to the power of amotion incident to corporations at large, see further 2 Kyd on Corporations, pp. 50—94, and cases there cited, and also *Rex* v. *Doncaster*, 2 Burr. 738; *Jay's* case, 1 Vent. 302; *Rex* v. *Chalke*, Ld. Raym. 225; *Rex* v. *Newbury* (*Mayor, &c., of*), 1 Q. B. 751.

As to filling casual vacancies in the office of vestryman or auditor, see the Vestrymen and Auditors (London) Order, 1897, r. 22, and sched. 5, *post*, p. 565.

(*u*) **Corporate office** is defined by sec. 7 (1) *ante*.

Secs. 40 and 41 are applied also to the office of vestryman and auditor, by the Loc. Govt. Act, 1894, sec. 48 (4), *post*, and are modified and adapted for that purpose by the Vestrymen and Auditors (London) Election Order, 1897, sched. 5, *post*, p. 583.

(*x*) **Election shall be held.** An election to fill a casual vacancy must be held within fourteen days after notice of the vacancy. Sec. 66, *post*. But "nothing shall authorise or require a returning officer to hold an election of a county councillor to fill a casual vacancy which occurs within six months of the" triennial election. County Councils (Elections) Act, 1891, sec 1 (4), *post*, p. 121.

(*y*) **Order of rotation.** As all the county councillors retire together triennially (Loc. Govt. Act, 1888, sec. 2 (2) (*d*), *ante*), the provisions of sub-sec. (2) are inapplicable to county council elections. But all the provisions of this section are applied with modifications to casual vacancies occurring in Metropolitan Vestries or the Local Board of Woolwich by the Loc. Govt. Act, 1894, sec. 48, *post*, and the Vestrymen and Auditors (London) Order, 1897, sched. 5, *post*.

declaration by this Act required (*m*), or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified (*n*), he shall for each offence be liable to a fine not exceeding fifty pounds (*o*) recoverable by action. 45 & 46 Vict. c. 50.

(2) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein (*p*).

42.—(1) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified (*q*). Validity of acts done notwithstanding disqualification, &c.

(2) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3) A burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority (*r*) by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorised or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the *mayor* (*s*). Duties of town clerk, deputy, and treasurer, during vacancy or incapacity.

Part III.—Preparations for and Procedure at Elections.

County Lists; County Registers; Division Registers.

44.—[*Preparation and revision of parish burgess lists. Superseded so far as it would affect London, by the County Electors Act*, 1888, *sec.* 4, *post, vol. ii. tit.* "*County Electors.*"]

45.—(*t*) (1) When the parish burgess lists have been revised and signed, the revising authority (*u*) shall deliver them to the *town clerk* (*t*), and a printed copy thereof (*x*), examined by him and signed by him, shall be the *burgess roll of the borough* (*t*). *County Register and Division Register.*

(*m*) **The declaration** is required by sec. 35, *ante*, in the form set out in sched. 8, *post*.

(*n*) **Disqualified.** As to what persons are qualified, and disqualified, see secs. 9, 11, 12, and 39, *ante*.

(*o*) **Liable to a fine.** Where an alderman or councillor becomes disqualified by having an interest in a contract with the council, he is not liable to penalties under this section for acting after the termination of the contract. *Lewis* v. *Carr*, 1 Ex. D. 484, 46 L. J. Ex. 314. Where a woman was elected a member of a county council, and no proceedings were taken until after twelve months had elapsed to question the validity of her election, she was held liable to penalties under this section for acting after the expiration of the twelve months, notwithstanding the provisions of sec. 73, *post*. *De Souza* v. *Cobden* (1891), 1 Q. B. 687, 60 L. J. Q. B. 533.

(*p*) **Entitled to be enrolled.** See sec. 11 (2) (a), and note thereto, *ante*.

(*q*) **Acts of person in possession of corporate office.** See also sec. 102, *post*.

(*r*) **Revising authority**, i.e., the revising barrister, as to whose appointment see the County Electors Act, 1888, secs. 9 and 10, *post*, vol. ii. tit. "*County Electors.*"

(*s*) **Mayor.** When applying this Act to the county council, for "mayor" substitute "chairman, vice-chairman, or deputy chairman." Loc. Govt. Act, 1888, sec. 2 (5) (6), and sec. 88, *ante*.

(*t*) **Burgess roll and ward roll.** Sec. 45 applies for the purposes of sec. 7 of the County Electors Act, 1888, with the substitution of clerk of the county council for town clerk, county register and division register for burgess roll and ward roll, and of electoral division for ward. *Ib.* secs. 7 (2) and 14, *post*, vol. ii. tit. "*County Electors.*"

(*u*) **Revising authority**, i.e., the revising barrister. County Electors Act, 1888, sec. 4 (2) (g), *post*, vol. ii. tit. "*County Electors.*"

(*x*) **Copy thereof.** The town clerk's duty is to make out the burgess roll in accordance with the revising barrister's directions, and the Court has no power to issue a *mandamus* to compel the clerk to correct a mistake which is discovered after the roll

45 & 46 Vict. c. 50.

(2) The *burgess roll* (*y*) shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day (*z*).

(3) The names in the *burgess roll* (*y*) shall be numbered by *wards* (*y*) or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to *wards* or polling districts (*a*).

(4) *Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough* (*b*).

(5) Where the *borough* has *wards*, the *burgess roll* (*y*) shall be made in separate rolls called *ward rolls* (*c*), one for each ward, containing the names of the persons entitled to vote in that ward, and the ward *rolls* collectively shall constitute the *burgess roll* (*y*).

(6) A *burgess* shall not be *enrolled* in more than one *ward roll* (*d*).

(7) Where a duplicate of a *burgess list* is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof (*e*).

(8) Every person *enrolled in the burgess roll* shall be deemed to be *enrolled as a burgess*, and every person not *enrolled in the burgess roll* shall be deemed to be not *enrolled as a burgess* (*y*).

(9) No stamp duty shall be payable in respect of the *enrolment of a burgess* (*y*).

46. [*Arrangement of lists and rolls. Superseded in the Metropolis by County Electors Act*, 1888, *sec.* 5, *post*, *vol. ii.*]

47. [*Correction of burgess roll. Superseded by County Electors Act*, 1888, *sec.* 6, *post*, *vol. ii.*]

Printing and sale of *county register* and other documents.

48.—(1) The *town clerk* shall cause the *parish burgess lists*, the list of claimants and respondents, and the *burgess roll*, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy (*f*).

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has been published. *Keay, Ex parte, Re Eastbourne Town Clerk*, 66 L. T. (N. S.) 323; 56 J. P. 470. *Quære*, whether there might not be a remedy by a writ of *mandamus* to the revising barrister, *per* Wright, J., *ib.* *See Reg.* v. *Rochester* (*Mayor, &c., of*), E. B. & E. 1024; 27 L. J. Q. B. 434.

(*y*) **Burgess roll and ward roll.** See note (*t*) on page 93.

(*z*) **Completion, &c., of county register.** The lists of parliamentary voters and of county electors are to be revised in each year between September 8th and October 12th, as soon after September 7th as possible. County Electors Act, 1888, sec. 6 (1), *post*, vol. ii. tit. "*County Electors.*" The county register is to be completed in each year before December 20th, and to come into operation on the following January 1st. Coun. Counc. (Electns.) Act, 1891, sec. 2 (1), *post*.

(*a*) **Numbered consecutively.** The names of the parliamentary electors and county electors in the lists in each polling district may be numbered consecutively. Loc. Govt. Act, 1888, sec. 76 (3), *ante*.

(*b*) **Subsection (4)** is inapplicable to London.

(*c*) **Separate ward rolls.** The clerk of the county council is required to make up a register of all persons registered as county electors, both for the county and for each electoral division into which the county is divided. County Electors Act, 1888, secs. 7 and 14, *post*, vol. ii. tit. "*County Electors.*"

(*d*) **Enrolled in more than one ward.** A county elector may, however, be registered in more than one electoral division of the same county (County Electors Act, 1888, sec. 7 (4), *post*, vol. ii. tit. "*County Electors*"), but must not vote in more than one electoral division of the same county at the same election. Secs. 51 (2) and 59, *post*; and *Knill* v. *Towse*, 24 Q. B. D. 697; 59 L. J. Q. B. 455.

(*e*) **Duplicate of burgess list.** The Parly. and Mun. Reg. Act, 1878 (41 & 42 Vict. c. 26), sec. 31, requires the revising barrister to sign and deliver to the town clerk a duplicate of the whole or part of any revised list, made out in divisions and relating to that borough, the duplicate to be prepared by the town clerk. And now by the County Electors Act, 1888, sec. 7 (2), *post*, vol. ii. tit. "*County Electors*," the revising barrister is required to send a copy of the revised list of county electors to the clerk of the county council.

(*f*) **Section 48.** This section applies for the purposes of sec. 7 of the County Electors Act, 1888, with the substitution of clerk of the council for town clerk, of county register for burgess roll, and of county fund for borough fund. *Ib.* sec. 7 (2), *post*, vol. ii. tit. "*County Electors.*"

(2) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the *borough fund* (*f*). 45 & 46 Vict. c. 50.

49. [*Separate list of persons qualified to be councillors but not to be burgesses. Inapplicable to London. See Loc. Govt. Act*, 1888, *sec.* 77, *ante.*]

Election of Councillors.

50. [*Borough and ward elections. Inapplicable to London. See Loc. Govt. Act*, 1888, *sec.* 40 (4) *ante.*]

51.—(1) At an election of councillors a person shall be entitled to subscribe a nomination paper (*g*), and to demand and receive a voting paper, and to vote (*h*), if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise. Title to vote.

(2) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward (*i*).

(3) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it (*k*), or relieve him from any penalty to which he may be liable for doing it.

52. The ordinary day of election of councillors shall be the *first of November* (*l*). Day of election.

53. [*Returning officer at election. Inapplicable to county council. See Loc. Govt. Act*, 1888, *sec.* 75 (2) (3), *ante.*]

54. Nine days at least before (*m*) the day for the election of a councillor, the *town clerk* (*n*) shall prepare and sign a notice thereof (*o*), and publish it by fixing it on the town hall (*p*), and, in the case of a ward election, in some conspicuous place in the ward. Notice of election.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in part ii. of the third schedule (*q*). Nomination of candidates.

(*g*) **Nomination.** For rules as to nomination in election of councillors, see sched. 3, part ii., *post.* The person nominating a candidate must be entitled to vote for the particular ward or electoral division for which he nominates, and if he be entitled to vote only for another ward or electoral division his nomination and the election of the candidate are void. *Reg.* v. *Parkinson*, L. R. 3 Q. B. 11 ; 37 L. J. Q. B. 52.

(*h*) **Entitled to vote.** The burgess roll or county register is conclusive as to the persons entitled to vote, and the qualification of a voter on the roll cannot be questioned in a *quo warranto* against the person elected. *Reg.* v. *Tugwell*, L. R. 3 Q. B. 704 ; 37 L. J. Q. B. 275.

(*i*) **More than one ward.** A person may be registered in more than one electoral division of the same county (County Electors Act, 1888, sec. 7 (4), *post*, vol. ii. tit. "*County Electors*"), but must not vote in more than one electoral division of the same county at the same election. *Knill* v. *Towse*, *ante*, p. 94. He may, however, nominate and vote for as many candidates as there are vacancies in the same electoral division. Sched. 3, part ii., and sec. 58 (2), *post.*

(*k*) **Prohibited by law.** As to what persons are prohibited by law from voting, see note to sec. 9 (3) (c), *ante.*

(*l*) **The ordinary day of election** of county councillors is such day between March 1st and 8th as the council may fix, and, if no date is fixed, is March 8th. Coun. Counc. (Electns.) Act, 1891, sec. 1, *post.*

(*m*) **Nine days at least before**, i.e., clear days, exclusive of the day of notice and the day of election. *Reg.* v. *Shropshire JJ.*, 8 A. & E. 173 ; *Young* v. *Higgon*, 6 M. & W. 49 ; *Reg.* v. *Middlesex JJ.*, 3 D. & L. 109 ; 14 L. J. M. C. 139 ; *Howes* v. *Turner*, 1 C. P. D. 670 ; 45 L. J. C. P. 550. As to Sundays and holidays, see sec. 230, *post.*

(*n*) **Town clerk.** For the purposes of county council elections, substitute "returning officer or his deputy" for "town clerk." Loc. Govt. Act, 1888, sec. 75 (5), *ante.*

(*o*) **Notice.** If the notice is calculated to mislead the candidates, and so prevent a fair election, the election may be declared void. *Howes* v. *Turner*, *supra.* Matters necessary for several wards or divisions may be comprised in one notice. Sec. 65, *post.*

(*p*) **Fixing on town hall.** See sec. 232, *post.*

(*q*) **Rules in part ii. sched. 3.** *Post.* Noncompliance with these rules will not invalidate the election if it is conducted in accordance with the principles laid down in the body of this Act. Sec. 72, *post.*

45 & 46 Vict. c. 50.

Relation of nomination to election.

56. (*r*)—(1) If the number of valid nominations (*s*) exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the *mayor* (*t*), shall be deemed to be re-elected to make up the required number.

(4) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected (*u*).

Publication of uncontested election.

57.—If an election of councillors is not contested, the returning officer shall publish a list of the persons elected (*x*) not later than eleven o'clock in the morning (*x*) on the day of election.

Mode of conducting poll at contested election. 35 & 36 Vict. c. 33.

58.—(1) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in part iii. of the third schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies (*y*).

(3) (4) [*Hours of poll* (*z*).]

(5) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing (*a*).

(6) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed (*b*), and notice in writing of the appointment is given to the returning officer, one

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(*r*) **Section 56** is adapted to the election of vestrymen and auditors by the Vestrymen and Auditors (London) Election Order, 1897, r. 9, *post*, p. 562.

(*s*) **Valid nominations.** Where the nomination of a candidate who obtained the majority of votes was invalid, his nomination was declared void, and the other candidate was declared to be elected. *Brown* v. *Benn*, 53 J. P. 167. Where on a casual vacancy no valid nomination was made, the Court granted a *mandamus* to hold an election, and ordered the costs of the application to be paid by the corporation. *Stratford-on-Avon, In re Mayor, &c., of*, 2 T. L. R. 431.

(*t*) **Mayor.** At county council elections for "the mayor" substitute the "returning officer or his deputy." Loc. Govt. Act, 1888, sec. 75 (4), *ante*.

(*u*) **Retiring councillors re-elected** under this sub-section are not, it would seem, liable to a fine if they refuse to serve, provided they claim exemption within five days after notice of election. Sec. 34 (3) (b), *ante*.

(*x*) **Returning officer to publish list.** The returning officer must, in addition, forthwith after the election of county councillors, return the names of the persons elected to the clerk of the county council. Loc. Govt. Act, 1888, sec. 75 (8), *ante*.

(*y*) **Vote for any number of candidates.** But no person must vote in more than one ward or electoral division at the same election. Sec. 51 (2) *ante*; *Knill* v. *Towse*, *ante*, p. 94.

(*z*) **Hours of poll.** Sub-secs. (3) and (4) are obsolete. The hours of poll are now from 8 a.m. to 8 p.m. at all municipal, county council, and vestry elections. Elections (Hours of Poll) Act, 1884 (48 Vict. c. 10); Loc. Govt. Act, 1888, sec. 75 (11), *ante*; Loc. Govt. Act, 1894, sec. 31, *post*.

(*a*) **Additional vote.** Apparently the returning officer, if otherwise qualified, is entitled to vote in the first instance at the election of councillors. This he cannot do at parliamentary elections. Ballot Act, 1872, sec. 2. But the provisions of that Act with respect to the voting of a returning officer do not apply in the case of a municipal election. Sched. 3, part iii. (1), of the present Act, *post*.

(*b*) **Agent of candidate.** The counting agent at the counting of the votes is here referred to. The Ballot Act, 1872, sched. 1, part i., r. 31, *et seq.*, contains provisions as to his appointment, &c.

clear day before (*c*) the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election. 45 & 46 Vict. c. 50.

Questions which may be put to voters.

59.—(1) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent (*d*), put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions (*e*), or either of them.

(a) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough (*f*) [*or* ward] as follows [*read the whole entry from the roll*] ?

(b) Have you already voted at the present election [*add, in case of an election for several wards*, in this or any other ward] (*g*) ?

(2) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4) Save as by this Act authorised, no inquiry shall be permitted at an election as to the right of any person to vote.

Election of Aldermen.

Time and mode of election of aldermen.

60.—(1) The ordinary day of election of aldermen shall be the *ninth of November* (*h*), and the election shall be held at the quarterly meeting of the council (*i*).

(2) The election shall be held immediately after the election of the mayor (*k*), or, if there is a sheriff, the appointment of the sheriff.

(3) An outgoing alderman, although mayor elect, shall not vote (*l*).

(*c*) **One clear day before**, i.e., the day next but one before the polling day, exclusive of Sunday, Christmas Day, Good Friday, or Easter Monday and Tuesday. See sec. 230, (3), *post*, and note (*m*) to sect. 54, *ante*.

(*d*) **Or his agent**, i.e., the candidate's polling agent, who is appointed under the Mun. Electns. (Corr. & Ill. Prac.) Act, 1884, *post*, p. 548. To support an indictment for falsely answering the questions, it is not necessary to show that the agent requiring them to be put was expressly appointed by the candidate. It is sufficient to show that he acted for him. *Reg.* v. *Spalding*, Carr. & M. 568.

(*e*) **Following questions.** The questions must be asked in the very words of the Act. *Canterbury*, K. & O. 326.

(*f*) **Are you the person enrolled ?** A person who applies for a ballot paper in the name of some other person, living or dead, or a fictitious person is guilty of personation. Ballot Act, 1872 (35 & 36 Vict. c. 33), sec. 24. But it will be observed that the question in this sub-section is not whether the voter's name, address, and qualification are as stated in the entry, but whether he is the person so enrolled. The person actually enrolled may, therefore, safely answer this question in the affirmative, although his name, address, or qualification may be incorrectly stated in the roll. *Oldham*, 1 O'M. & H. 152—154.

(*g*) **Have you already voted ?** No person may vote in more than one ward at the same election. Sec. 51 (2), *ante*, and *Knill* v. *Towse*, *ante*, p. 94. A person who does so is guilty of personation. Ballot Act, 1872, sec. 24.

(*h*) **The ordinary day of election** of county aldermen is March 16th, or such other day within ten days after the ordinary day of retirement of county councillors as the county council may from time to time fix. Coun. Counc. (Electns.) Act, 1891, sec. 1 (3), *post*.

(*i*) **Quarterly meeting.** Municipal councils are required to hold quarterly meetings by rule 2 of sched. 2 to this Act; which schedule, however, does not apply to meetings of the London County Council (London Coun. Counc. (Gen. Powers) Act, 1893, sec. 10), and the provisions which are substituted by that Act do not require the Council to hold quarterly meetings. *Ib.* schedule, *post*, p. 114.

(*k*) **After election of mayor.** If the election of aldermen precedes the election of mayor the election is void. *Reg.* v. *M'Gowan*, 11 A. & E. 869.

(*l*) **Outgoing alderman.** An alderman who, on the appointed day for the election of mayor and aldermen, was elected mayor, and thereupon made and subscribed a declaration in the form contained in sched. 8 of this Act, and then voted in the election of aldermen, was held not to have ceased to be an "outgoing alderman" within this sub-section, and his vote was declared invalid." *Hounsell* v. *Suttill*, 19 Q. B. D. 498; 56 L. J. Q. B. 502. A county alderman cannot, as such, vote in the election of county aldermen. Loc. Govt. Act, 1888, sec. 2 (2) (c), *ante*.

45 & 46 Vict. c. 50.

(4) Every person entitled to vote (*m*) may vote for any number of persons not exceeding the number of vacancies, by signing (*n*) and personally delivering (*o*) at the meeting to the chairman a voting paper containing the surnames and other names (*p*) and places of abode and descriptions (*q*) of the persons for whom he votes.

(5) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months (*r*).

(6) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote (*z*).

(7) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

Election of Mayor.

Time and mode of election of mayor.

61.—(1.) The ordinary day of election of mayor shall be the *ninth of November* (*t*).

(2) The election of mayor shall be the first business transacted (*u*) at the quarterly meeting (*x*) of the council on the day of election.

(3) *An outgoing alderman may vote although the person for whom he votes is an alderman* (*y*).

(4) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote (*z*).

(*m*) **Entitled to vote.** In the case of the county council, this means every member of the council, except the aldermen. Sec. 14 (1), *ante*, and Loc. Govt. Act, 1888, sec. 2 (2) (c), *ante*.

(*n*) **Signing.** Signing the initials of the Christian name only, with the surname in full, is sufficient. *Reg.* v. *Hartlepool (Mayor, &c., of)*, 2 L. M. & P. 666 ; 21 L. J. Q. B. 71.

(*o*) **Personally delivering.** Collection of the voting papers, in the presence of the chairman, from the councillors present, by the town clerk, and immediate delivery by him to the chairman, is personal delivery within the meaning of this subsection. *Baxter* v. *Spencer*, 69 J. P. 376.

(*p*) **Other names.** A contraction of the Christian name, such as is ordinarily understood, e.g., Wm. for William, is sufficient. *Reg.* v. *Bradley*, 3 E. & E. 634 ; 30 L. J. Q. B. 180. If the initial only of the Christian name is given, it is a misnomer, which is cured by sec. 241, *post*. *Reg.* v. *Plenty*, L. R. 4 Q. B. 346 ; 38 L. J. Q. B. 205.

(*q*) **Places of abode and descriptions.** The place of abode means the place where the person resides. Describing him as of his place of business, when he resides elsewhere, is such a misdescription of his place of abode as to avoid the election. *Reg.* v. *Deighton*, 5 Q. B. 896 ; 13 L. J. Q. B. 241. Where in an election of aldermen the councillors used blank slips of paper for voting papers, and only filled in the surnames and initials of the persons voted for, without their place of abode or description, and did not sign the papers, and the papers were not handed personally to the chairman, but were passed up to him in an irregular manner, a *mandamus* was granted for a fresh election. *Reg.* v. *Wilton (Mayor, &c., of)*, 34 W. R. 273. As to the effect of a misnomer or inaccurate description, see sec. 241, *post*.

(*r*) **Twelve months,** i.e., twelve calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63).

(*t*) **The ordinary day of election** of chairman of the county council is now March 16th or such other day within ten days after the ordinary day of retirement of county councillors as the county council may from time to time fix. Coun. Counc. (Electns.) Act, 1891, sec. 1 (3), *post*.

(*u*) **Election of mayor.** The election of mayor must precede the election of aldermen, and a prior election of aldermen is void. *Reg.* v. *M'Gowan*, 11 A. & E. 869. The elections should have precedence over all other business, and no other matters inconsistent with them can be discussed until they have taken place. *Rex* v. *Parkyns*, 3 B. & A. 658.

(*x*) **Quarterly meeting.** See note (*i*) on page 97.

(*y*) **Outgoing alderman.** An outgoing county alderman cannot, as alderman, vote in the election of a chairman of a county council. Loc. Govt. Act, 1888, sec. 75 (10), *ante*.

(*z*) **Chairman's casting vote.** The chairman of the meeting of the London County Council has, in ordinary cases, a second or casting vote when there is an equality of votes. London Coun. Counc. (Genl. Powers) Act, 1893, schedule 2, rule 9, *post*, p. 114.

62. [*Time and mode of election of auditors and assessors. Not applied to county council. Loc. Gov. Act*, 1888, *sec.* 75 (16) (b), *ante. Revising assessors were abolished by the County Electors Act*, 1888, *sec.* 4 (1) (a), *post, vol. ii.*] 45 & 46 Vict. c. 50.

Supplemental and Exceptional Provisions.

Supplemental and Exceptional Provisions.

63. (*a*) For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women (*b*). Right of women to vote.

64. The council may divide the borough or any ward into polling districts, *and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts* (*c*). Polling districts.

65. Any notice required to be given in connection with a municipal election may, *as to elective auditors and revising assessors, be comprised in one notice, and may* (*d*), as to ward elections, comprise matter necessary for several wards. Notices as to elections.

66.—(1) On a casual vacancy (*e*) in a corporate office (*f*), the election shall be held within fourteen days after (*g*) notice in writing of the vacancy has been given to the *mayor or town clerk* by two *burgesses* (*h*). Time for filling casual vacancies.

(2) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3) In other cases the day of election shall be fixed by the mayor (*i*).

The right of a chairman of a meeting, not otherwise disqualified, to have a first vote, besides a casting vote, is not interfered with by this sub-section. *Nell* v. *Longbottom* (1894), 1 Q. B. 767 ; 63 L. J. Q. B. 490. Though an outgoing county alderman cannot, as alderman, vote in the election of a chairman of a county council, the present sub-section would appear to enable an outgoing county alderman, who is chairman of the meeting, to give the casting vote in case of an equality of votes, although not entitled to vote in the first instance.

(*a*) **Section 63** is supplemental to sec. 9, *ante*, and is extended to so much of every county as is not within the limits of a municipal borough, by the County Electors Act, 1888, sec. 2 (2), *post*, vol. ii. tit. "*County Electors.*"

(*b*) **Include women.** These provisions enable single women and widows, possessing the necessary qualification, to vote, but not married women. *Reg.* v. *Harrald*, L. R. 7 Q. B. 361 ; 41 L. J. Q. B. 173. They do not, however, remove the incapacity of women to be elected. *Beresford-Hope* v. *Sandhurst* (*Lady*), 23 Q. B. D. 79 ; 58 L. J. Q. B. 316.

(*c*) **Section 64.** The portion of this section which is printed in italics is replaced by the provisions of the County Electors Act, 1888, sec. 4 (2) (e), *post*, vol. ii. tit. "*County Electors*," and the Loc. Govt. Act, 1888, sec. 76, *ante*.

(*d*) **Elective auditors and revising assessors.** The provisions of this Act as to elective auditors do not apply to county councils. Loc. Govt. Act, 1888, sec. 75 (16) (b), *ante ;* and revising assessors are no longer to be elected. County Electors Act, 1888, sec. 4 (1) (a), *post*, vol. ii. tit. "*County Electors.*"

(*e*) **Casual vacancy.** For mode of filling casual vacancies in the office of county councillor, see sec. 40, *ante ;* and in the office of vestryman or auditor, see the Vestrymen and Auditors (London) Order, 1897, and sched. 5, *post*, p. 583.

(*f*) **Corporate office** is defined by sec. 7 (1), *ante*. Sec. 66 is also applied to the office of vestryman and auditor by the Loc. Govt. Act, 1889, sec. 48 (4), *post*, and is modified and adapted for that purpose by the Vestryman and Auditors (London) Election Order, 1897, sched. 5, *post*, p. 583.

(*g*) **Within fourteen days after.** For method of computation of time see sec. 230, *post*. Where a casual vacancy occurs in a county council within six months before the triennial election, the vacancy is not to be filled. ~~Loc. Govt. Act, 1888, sec. 75 (16) (d), *ante.*~~ See sec. 70, *post*, as to the course to be pursued in the case of omission to hold the election in due time, or where the election becomes void.

County Councils (E Act, 1891, sec 1(4) p 121.

(*h*) **Notice of vacancy.** If the vacancy is in the office of chairman or alderman of the county council, notice must be given to the chairman or clerk of the council by two county electors, in accordance with this sub-section ; but if it is in the office of county councillor, notice must be given to the returning officer or his deputy. Loc. Govt. Act, 1888, sec. 75 (2) (3) (4) (5), *ante*.

(*i*) **Day of election.** Where the office vacant is that of county alderman, the day of election is fixed by the chairman under this sub-section ; but if the vacancy is that of county councillor, the day of election is fixed by the returning officer or his deputy. Loc. Govt. Act, 1888, sec. 75 (2) (3) (4) (5), *ante*. If there is no valid nomination on the day of election fixed by the returning officer, the Court will grant a *mandamus* appointing a fresh date for the election. *Stratford-on-Avon, In re Mayor, &c., of*, 2 T. L. R. 431.

45 & 46 Vict. c. 50.

67. [*Illness, &c., of mayor or returning officer. Inapplicable to county council. See Loc. Govt. Act*, 1888, *sec.* 75 (2) (3), *ante.*]

Election of councillor in more than one ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after (*k*) notice thereof, choose, by writing signed by him and delivered to the town clerk (*l*), or in his default the *mayor* (*l*) shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

Elections not in churches.

69. A municipal election (*m*) shall not be held in any church, chapel, or other place of public worship.

Omission to hold election, or election void.

70.—(1) If a municipal election (*m*) is not held on the appointed day (*n*) or within the appointed time (*o*), it may be held on the day next after that day or the expiration of that time.

(2) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void (*p*), the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court.

(3) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall (*q*), and shall be kept so fixed for at least six days before (*r*) the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

Burgess roll to be in operation until revision of new burgess roll.

71.—(1) If a parish burgess list is not made or revised in due time (*s*), the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

(*k*) **Within three days after.** As to how this time is computed, see sec. 230, *post.*

(*l*) **Town clerk; mayor.** With respect to county council elections, substitute "the returning officer" for "the town clerk" and "mayor."

(*m*) **Municipal election** is defined by sec. 7 (1), *ante.* In applying this Act to county councils, "county election" must be substituted.

(*n*) **Appointed day.** For the appointed day for the election of county councillors, see sec. 52, *ante*, and note thereto; of chairman, see sec. 61 (1), *ante*, and note thereto; of county aldermen, see sec. 60 (1), *ante*, and note.

(*o*) **Appointed time.** This refers to casual vacancies, as to which see sec. 66, *supra.*

(*p*) **Omission to hold election, or election void.** This section only applies where there has been no election, or where the election, by irregularity, default, or accident, becomes void. As to where a party is disqualified at the time of his election or becomes disqualified afterwards, during the holding of his office, see sects. 12 and 39, *ante*, and notes thereto. For cases in which a *mandamus* will be granted or refused, see *Reg.* v. *Leeds* (*Mayor, &c., of*), 7 A. & E. 963; *Reg.* v. *Corporation of Pembroke, infra*; *Reg* v. *Cambridge* (*Mayor, &c., of*) 4 Burr. 2008; *Case of the Borough of Tintagel*, 2 Str. 1003; Lord Mansfield's observations in *Rex* v. *Bankes*, 3 Burr. 1454; *Rex* v. *Godwin*, Doug. 382; *Rex* v. *Winchester* (*Mayor, &c., of*) 7 A. and E. 215; *Reg.* v. *Wilton* (*Mayor, &c., of*), *ante*, p. 89; and *Stratford-on-Avon, In re Mayor, &c., of, ante*, p. 96. Where a county council election to fill a casual vacancy was not held on the appointed day, owing to there having been no valid nomination, the Court granted a peremptory *mandamus* to hold a fresh election on a day appointed by the Court. *Reg.* v. *West Sussex Coun. Counc., Ex parte Henderson*, 65 L. J. Q. B. 184; 59 J. P. 808. The *mandamus* must be directed in the corporate title to the mayor, &c., though no mayor may be actually in existence. *Reg.* v. *Pembroke Corporation*, 8 Dowl. P. C. 302. See sec. 225, *post*, for provisions regulating applications for a *mandamus.*

(*q*) **Fixed on town hall.** See sec. 232, *post.*

(*r*) **At least six days before**, i.e., clear days (*Howes* v. *Turner*, *ante*, p. 95), exclusive of Sundays, Christmas Day, Good Friday, and Easter Monday and Tuesday. Sec. 230 *post.*

(*s*) **In due time.** This section is applied to the registration of county electors by the Coun. Electors Act, 1888, sec. 7 (2), *post*, vol. ii. tit. "*County Electors.*" The list must be made out on or before July 31st, Parl. & Mun. Regn. Act, 1878 (41 & 42 Vict. c. 26), sec. 15; and revised between September 8th and October 12th. County Electors Act, 1888, sec. 6 (1). The burgess roll must be completed before October 20th in each year, and comes into operation on November 1st of that year, sec. 45 (2), *ante*, and the county register must be completed before December 20th in every year and comes into operation on the next January 1st. Coun. Counc. (Electns.) Act, 1891, sec. 2 (1), *post.*

45 & 46 Vict. c. 50.

72. An election shall not be invalidated by non-compliance with the rules in the third schedule, or mistake in the use of the forms in the eighth schedule (*t*), if it appears to the court having cognisance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

Non-compliance with rules.

73. Every municipal election (*u*) not called in question within twelve months after (*x*) the election, either by election petition (*y*), or by information in the nature of a quo warranto (*z*), shall be deemed to have been to all intents a good and valid election (*a*).

Election valid unless questioned within twelve months.

74.—(*b*) (1) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk (*c*) any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

Offences in relation to nomination papers.

(2) An attempt to commit any such offence shall be punishable as the offence is punishable.

75.—(*b*) (1) If a mayor or revising assessor neglects or refuses to revise a parish burgess list (*d*), or a mayor or alderman (*e*) neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

Offences in relation to lists and elections.

(2) If—

(a) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act (*f*); or

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(*t*) **Non-compliance with rules; Mistake in use of forms.** Only the rules contained in parts ii. and iii. of sched. 3, and form A in part i. of sched. 8, *post*, are applied to county council elections. Loc. Govt. Act, 1888, sec. 75, *ante*.

This section is similar in terms to sec. 13 of the Ballot Act, 1872 (35 & 36 Vict. c. 33). To render an election void the non-observance of or non-compliance with the rules and forms given in that Act must be so great as to satisfy the Court that the election has been conducted in a manner contrary to the principle of an election by ballot, and that the irregularities complained of did affect the result of the election. *Woodward* v. *Sarsons*, L. R. 10 C. P. 733; 44 L. J. C. P. 293. See also *Northcote* v. *Pulsford*, 10 C. P. 476; 44 L. J. C. P. 417. Where the number on the burgess roll of L. R. a nominating burgess was incorrectly stated in the nomination paper, and an objection thereto was allowed by the returning officer, it was held that his decision was right, and that the effect of the mistake was not and could not be amended under the provisions of sec. 13 of that Act. *Gothard* v. *Clarke*, 5 C. P. D. 253; 49 L. J. Q. B. 474. But where the blank in the space for the name of the electoral division in the nomination paper of a candidate at a county council election had not been filled in, it was held that the omission was a "mistake in the use of the form" within the present section, and did not invalidate the nomination. *Marton* v. *Gorrill*, 23 Q. B. D. 139; 58 L. J. Q. B. 329.

(*u*) **Municipal election.** See note (*m*) on page 100.

(*x*) **Within twelve months after,** i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3. See also sec. 230, *post*.

(*y*) **Election petition.** As to election petitions, and the time within which an election petition must ordinarily be presented, see sec. 87, *et seq.*, *post*, and Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, sec. 25, *post*, p. 553.

(*z*) **Quo warranto.** See sec. 225, and note thereto, *post*.

(*a*) **Valid election.** *Quære* whether this section applies to the election of a person whose status is one of absolute incapacity for election, such as a woman. *De Souza* v. *Cobden*, *ante*, p. 93. See also remarks of Blackburn, J., in *Ex parte Birkbeck*, L. R. 9 Q. B. 256.

(*b*) **Sections 74 and 75** are also applied to the election of vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48 (3), *post*, and are modified and adapted for that purpose by the Vestrymen and Auditors (London) Election Order, 1897, rule 24 (1) and sched. 4, *post*, p. 565.

(*c*) **Town clerk.** For "town clerk" substitute "returning officer or his deputy" in the case of county council elections. Loc. Govt. Act, 1888, sec. 75 (5), *ante*.

(*d*) **Revise burgess list.** The burgess lists are now revised, together with the lists of county electors and parliamentary voters, by revising barristers. County Electors Act, 1888, sec. 4 (1), *post*, vol. ii. tit. "*County Electors.*"

(*e*) **Mayor or alderman.** For "mayor or alderman" substitute "returning officer or his deputy," in county council elections. Loc. Govt. Act, 1888, sec. 75 (4), *ante*.

(*f*) **Overseers to sign, &c., burgess lists.** The above duties of the overseers with

45 & 46 Vict. c. 50.

(b) A town clerk neglects or refuses to receive, print, and publish a parish burgess list or list of claimants or respondents, as required by this Act (*g*); or

(c) An overseer or town clerk refuses to allow any such list to be inspected (*h*) by a person having a right thereto;

he shall for every such neglect or refusal (*i*) be liable to a fine not exceeding fifty pounds, recoverable by action.

(3) An action under this section shall not lie after three months (*k*) from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

76. [*Revival of former law on expiration of Ballot Act* (*l*).]

PART IV. (*m*)—CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

Corrupt Practices.

Definitions.

77. In this part—

"Bribery," "treating," "undue influence," and "personation" (*n*), include respectively anything done before, at, after, or with respect to a municipal election (*o*), which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:

(*p*) * * * * * * *

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

(*p*) * * * * * * *

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respect to the burgess lists were provided for by sec. 44, *ante*, which is practically superseded by the County Electors Act, 1888, *post*, vol. ii. tit. "*County Electors*"; and by sched. 3, part i. of the present Act, which is not applied to county councils by the Loc. Govt. Act, 1888, and is also practically superseded by sec. 4 of the County Electors Act, 1888, and the Registration Order, 1895.

(*g*) **Town clerk to receive, &c., burgess lists.** See secs. 45 and 48, *ante*, and notes thereto. Further duties were imposed on the town clerk by sched. 3, part i., as to which see the preceding note.

(*h*) **List to be inspected.** See sec. 233, *post*, as to inspection of documents. A party who neglects to make out a burgess is only liable to one penalty, and cannot be sued for a second penalty for refusing to allow inspection of such list when it does not in fact exist. *Gregory* v. *Fell*, 6 Jur. 422.

(*i*) **Neglect or refusal.** From decisions under other enactments, it would appear that the penalty is incurred, although the neglect be neither wilful nor corrupt. See *King* v. *Burrell*, 12 Ad. & E. 460; 9 L. J. Q. B. 337; *King* v. *Share*, 3 Q. B. 31; 11 L. J. Q. B. 163; *Hunt* v. *Hibbs*, 5 H. & N. 123; 29 L. J. Ex. 222.

(*k*) **Three months,** i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3. This time is apparently extended to six months by the Public Authorities Protection Act, 1893. Secs. 1 (a) and 2 (b), *post*, vol. ii., although the present sub-section is not included in the schedule of repeals to that Act.

(*l*) **The Ballot Act, 1872,** is continued until December 31st, 1897, by the Expiring Laws Continuance Act, 1896 (59 & 60 Vict. c. 39).

(*m*) **Part iv.,** as amended by the Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, *post*, p. 545, is applied to the election of county councillors, subject to such modifications as may be necessary, by the Loc. Govt. Act, 1888, sec. 75, *ante*; and to the election of vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48 (3), *post*, subject to the adaptations, alterations, and exceptions made by the Vestrymen and Auditors (London) Election Order, 1897, rule 24 (2), *post*, p. 565.

(*n*) **Bribery, treatings, &c.** For statutory definitions of "bribery," "treating," "undue influence," and "personation," see the Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, sched. 3, part i., *post*, p. 556.

(*o*) **Municipal election.** This expression must here be read to include "election of county councillors" (Loc. Govt. Act, 1888, sec. 75, *ante*); and also "election of vestrymen and auditors." Vestrymen and Auditors (London) Election Order, 1897, r. 24 (2), *post*, p. 565.

(*p*) **The omitted words** defined "corrupt practice" and "canvasser," and are repealed and replaced by the Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, *post*, p. 545.

"Voter" means a burgess or a person who votes or claims to vote at a municipal election (*q*): 45 & 46 Vict. c. 50.

"Election court" means a court constituted under this part for the trial of an election petition:

"Municipal election petition" or "election petition" means a petition under this part complaining of an undue municipal election: (*q*)

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868: 31 & 32 Vict. c. 125.

"Prescribed" means prescribed by general rules made under this part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

78, 79, 80. [*Repealed and replaced by Mun. Electns. (Corr. and Ill. Prac.) Act*, 1884, *post.*]

81. A municipal election (*q*) shall be wholly avoided (*r*) by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election. Avoidance of election for general corruption.

82, 83, 84. [*Paid agents and canvassers. Payment for conveyance of voters. Prosecutions for corrupt practices. Repealed and replaced by Mun. Electns. (Corr. and Ill. Prac.) Act*, 1884, *post, vol. ii.*]

85. The votes of persons in respect of whom any corrupt practice (*s*) is proved to have been committed at a municipal election (*q*) shall be struck off on a scrutiny. Striking off votes.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election (*t*) shall apply in the case of a municipal election (*q*). Personation.

Election Petitions.

87.—(1) A municipal election (*q*) may be questioned by an election petition on the ground— Power to question municipal election by petition.

(a) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(b) That the election was avoided by corrupt practices or offences against this part committed at the election; or

(c) That the person whose election is questioned was at the time of the election disqualified (*u*); or

(d) That he was not duly elected by a majority of lawful votes.

(2) A municipal election (*q*) shall not be questioned on any of those grounds except by an election petition (*x*).

88.—(1) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election. Presentation of petition.

(2) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.

(*q*) **Municipal election.** See note (*o*) on page 102.

(*r*) **Election wholly avoided.** The proper method of determining whether an election is void under this section is by election petition, as provided by sec. 87; and see *Pritchard* v. *Bangor* (*Mayor, &c., of*), and *Reg.* v. *Morton*, cited in note thereto, *infra.*

(*s*) **Corrupt practice** is defined by sec. 2 of the Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, *post*, p. 545.

(*t*) **Personation.** The enactments relating to personation are the Parly. Voters Registration Act, 1843 (6 & 7 Vict. c. 18), secs. 85—89; and the Ballot Act, 1872 (35 & 36 Vict. c. 33), sec. 24.

(*u*) **Disqualified at time of election.** If a person becomes disqualified after election, the remedy is by *quo warranto*, an application for an information in the nature of which cannot be made after the expiration of twelve months from the time when he became disqualified. Sec. 225, *post.*

(*x*) **Election petition.** The only method of questioning the validity of an election on any of the grounds named in this section is by election petition. *Pritchard* v. *Bangor* (*Mayor, &c., of*), 13 App. Cas. 241; 57 L. J. Q. B. 313; *Reg.* v. *Morton* (1892), 1 Q. B. 39; 61 L. J. Q. B. 39.

45 & 46 Vict. c 50.

(3) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4) It shall be presented within twenty-one days after (*y*) the day on which the election was held, except that if it complains of the election on the ground of corrupt practices (*z*), and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after (*y*) the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

Security for costs.

89.—(1) At the time of presenting an election petition or within three days afterwards (*y*), the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2) The security shall be to such amount (*a*), not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3) Within five days after (*y*) the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4) Within five days after (*y*) service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5) An objection to a recognisance shall be decided in the prescribed manner.

(6) If the objection is allowed, the petitioner may, within a further described time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Petition at issue.

90. On the expiration of the time limited for making objections, or, after objection made on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

91. [*Municipal election list of election petitions at issue to be made by prescribed officer* (*b*).]

92. [*Constitution of election court* (*b*).]

93. [*Trial of election petition* (*b*).]

94. [*Witnesses* (*b*).]

Withdrawal of petition.

95.—(1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place (*c*).

(*y*) **Within...days after.** See sec. 230, *post*, as to computing these days.

(*z*) **Corrupt practice** is defined by sec. 2 of the Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, *post*, p. 545. As to a petition on the ground of an illegal practice, see *ib.* sec. 25.

(*a*) **Amount of security.** As to the amount of security on a petition against the election of a vestryman or auditor, see the Vestrymen and Auditors (London) Election Order, 1897, r. 24 (2) (c), *post*, p. 566.

(*b*) **Procedure on election petitions.** This subject is beyond the scope of this work, and is fully treated in "Rogers on Elections," vol. iii.

(*c*) **Withdrawal of election petition.** Before leave for the withdrawal of a petition is granted all the parties to the petition must produce affidavits, stating that no agree-

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough. 45 & 46 Vict. c. 50.

(3) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration (*d*), the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement of petition.

96.—(1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal and substitution of respondents.

97.—(1) If before the trial of an election petition a respondent other than a returning officer—

(a) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

98. [*Costs on election petitions to be defrayed as election court determines* (*e*).]

99. [*Reception of and attendance on the election court* (*e*).]

100. [*Rules of procedure and jurisdiction* (*e*).]

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ment or terms have been made in relation to the withdrawal of the petition; but, if any lawful agreement has been made, setting forth that agreement. Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, sec. 26, *post*, p. 553.

(*d*) **Corrupt consideration.** To agree to withdraw an election petition in consideration of any payment, or of the vacation of the seat at any time, or of the withdrawal of any other petition, is a misdemeanour punishable by imprisonment for a year, and a fine not exceeding 200*l*. Mun. Electns. (Corr. and Ill. Prac.) Act, 1884, sec. 26 (4) *post*, p. 554.

(*e*) **Procedure on election petitions.** See note (*b*) on page 104.

45 & 46 Vict. c. 50.

101. [*Expenses of election court* (*f*).]

102. [*Acts done pending a petition not invalidated* (*f*).]

Provisions as to elections in the room of persons unseated on petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*g*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

Prohibition of disclosure of vote.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

PART V.

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Misapplication of Corporate Property.

Prohibition of expenditure of corporate funds on parliamentary elections.

124.—(1) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2) Any bond, covenant, recognisance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4) Any mortgage or other disposition of corporate land (*h*) for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5) Any resolution, byelaw, or other proceeding of a council, purporting to direct or authorise any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6) If any member of a municipal corporation authorises or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the

(*f*) **Procedure on Election Petitions.** See note (*b*) on page 104.

(*g*) **Casual vacancy.** See secs. 40 and 66, *ante*. As to filling casual vacancies in the office of vestryman or auditor, see the Vestrymen and Auditors (London) Order, 1897, r. 22, and sched. 5, *post*, p. 583.

(*h*) **Corporate land** is defined by sect. 7 (1), *ante*.

defendant, give reasonable security, as the court directs, for costs, as between solicitor and client. 45 & 46 Vict. c. 50.

(9) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

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PART XII.—LEGAL PROCEEDINGS.

Prosecution of offences and recovery of fines.

219.—(1) In summary proceedings (*i*) for offences and fines under this Act the information shall be laid within six months after (*k*) the commission of the offence.

(2) Any person aggrieved by a conviction (*l*) of a court of summary jurisdiction (*m*) under this Act (*n*) may appeal therefrom to a court of quarter sessions (*o*).

(3) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court (*p*).

Exclusion of certiorari.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act (*n*) shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court (*q*).

221. [*Application of penalties in quarter sessions boroughs. Inapplicable to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16) (a), *ante.*]

222. [*Duties of clerk of peace as to fines and forfeitures* (*r*).]

223. [*Service of summons or warrant* (*r*).]

Procedure in penal actions against corporate officers.

224.—(1) An action to recover a fine from any person for acting in a corporate office (*s*) without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified (*t*), may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after (*u*) the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to

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(*i*) **Summary proceedings.** See note to sec. 227 of the Met. Man. Act, 1855, *post*, for the manner of taking summary proceedings.

(*k*) **Within six months after**, i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3. Exclusive of the day on which the offence was committed, but inclusive of the day when the information is laid. Sec. 230, *post*, and *Radcliffe* v. *Bartholomew*, and *Robinson* v. *Waddington*, *post*, p. 199.

(*l*) **Conviction.** Apparently where there is no conviction there is no appeal.

(*m*) **Court of summary jurisdiction.** See note to sec. 21 (3) (b), *ante.*

(*n*) **"This Act"** must be construed to include the Loc. Govt. Act, 1888. *Ib.* sec. 75, *ante.*

(*o*) **Appeal to quarter sessions.** See note to sec. 227 of the Met. Man. Act, 1855, *post*, for the time for and manner of appealing.

(*p*) **Recovery by action.** An action to recover a fine from a corporate officer for acting without having made the requisite declaration, or without being qualified, or after becoming disqualified, can only be brought by a burgess or elector under certain restrictions, as to which see sec. 224, *post.*

(*q*) **Removed by certiorari.** Any order of the county council for payments to and out of the county fund may be removed into the High Court by writ of certiorari. Loc. Govt. Act, 1888, sec. 80 (1) and (2).

A statute taking away the certiorari, will not prevent the removal of a proceeding by certiorari, if it be made to appear that the justices have acted without jurisdiction, or have exceeded the authority given them by the statute, because it is then evidently not a proceeding under or justified by that statute, or where a conviction has been obtained by a manifest fraud. See Short and Mellor's Crown Office Practice, 1890, p. 116, *et seq.*

(*r*) **Sections 222 and 223,** though applied by sec. 75 of the Loc. Govt. Act, 1888, are not applicable to London.

(*s*) **Corporate office** is defined by sec. 7 (1), *ante.*

(*t*) **Fine for acting when disqualified.** The penalty for each offence is a fine not exceeding fifty pounds. Sec. 41, *ante.*

(*u*) **Within fourteen days after.** See sec. 230, *post*, as to computing this period.

45 & 46 Vict. c. 50.

bring the action (*x*), nor unless the action is commenced within three months after (*y*) the cause of action arose.

(2) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

Quo warranto and mandamus.

225.—(1) An application for an information in the nature of a quo warranto (*z*) against any person claiming to hold a corporate office (*a*) shall not

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(*x*) **Notice of action.** It is not necessary that the notice of action be contained in one document; it may be contained in a series of letters, if in the result the cause of action is clearly stated, and the other necessary particulars are disclosed. *Lamley* v. *East Retford* (*Mayor, &c., of*), 55 J. P. 133. As to what particulars should be given, see *Madden* v. *Kensington Vestry* (1892), 1 Q. B. 614; 61 L. J. Q. B. 527; and cases there cited. *Quære* whether notice of action is now necessary. See the Public Authorities Protection Act, 1893, *post*, vol. ii.

(*y*) **Within three months after.** See note to sec. 219, *ante*, for the meaning of this expression. *Quære* whether this period is extended to six months by the Public Authorities Protection Act, 1893, *post*, vol. ii.

(*z*) **Quo warranto.** Information in the nature of a *quo warranto* is the present substitute for the ancient writ of *quo warranto* (now obsolete), which was "in the nature of a writ of right for the king, against him who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right." 3 Black. c. 17, sec. 5. It is discretionary in the Court to grant or withhold a *quo warranto* information, even where a good objection to the title is shown, and in exercising its discretion the Court will have regard to the circumstances of each particular case. *Rex* v. *Parry*, 6 Ad. & E. 810; *Reg.* v. *Ward*, *infra*; *Reg.* v. *Hodson*, *infra*. *Ex parte Hindmarch*, *infra*. The Court will not allow the writ to issue merely because of an irregularity in an election, if the result has not been affected. *Reg.* v. *Ward*, L. R. 8 Q. B. 210; 42 L. J. Q. B. 126; *Reg.* v. *Cousins*, L. R. 8 Q. B. 216; 42 L. J. Q. B. 124. The Court refused to grant a rule for a *quo warranto* information, applied for by the former occupant of an office on the ground that his dismissal from office had been illegal, when they were satisfied that if reinstated he might legally and would be dismissed immediately. *Ex parte Richards*, 3 Q. B. D. 368; 47 L. J. Q. B. 498.

The Court will not allow the writ to issue, merely because of an irregularity in an election, if the result has not been affected. *Reg.* v. *Ward*, L. R. 8 Q. B. 210; 42 L. J. Q. B. 126; *Reg.* v. *Cousins*, L. R. 8 Q. B. 216; 42 L. J. Q. B. 124.

The qualification of a person to be on the burgess roll cannot, as a general rule, be questioned in a *quo warranto*. *Reg.* v. *Tugwell*, L. R. 3 Q. B. 704; 37 L. J. Q. B. 275; *Ex parte Hindmarch*, *infra*.

Where the title to one office was dependent on the title to another, the Court made the rule absolute for a *quo warranto* information for exercising the second office, upon a defect of title in the first, though it was too late to question the title to exercise the first office. *Reg.* v. *Stokes*, 2 M. & Sel. 71; but, under somewhat similar circumstances, in a later case, the Court, in the exercise of its discretion, discharged the rule. *Reg. v. Preece*, 5 Q. B. 94; 12 L. J. Q. B. 335.

Where the disqualification consists of interest in a contract with a corporation, the disqualification caused by it arises *de die in diem* while such contract continues, and the twelve months does not begin to run until the cessation of the contract. *Reg. v. Francis*, 18 Q. B. 526; 21 L. J. Q. B. 304.

Where an alderman became disqualified for being on the burgess list during his term of office, it was held that the twelve months began to run from the time his disqualification arose, and not from the time the new burgess roll came into force. *Ex parte Birkbeck*, L. R. 9 Q. B. 256; 22 W. R. 299.

Resignation is no answer to an information in the nature of a *quo warranto*, though it may regulate the discretion of the court in imposing the fine. *Rex* v. *Warlow*, 2 M. & S. 75. See also *Reg.* v. *Morton*, 4 Q. B. 146; *Rex* v. *Sidney*, 2 L. M. & P. 149; *Rex* v. *New Radnor*, 2 Ld. Keny. 498; and *Reg.* v. *Blizard*, L. R. 2 Q. B. 55; 36 L. J. Q. B. 18.

Acquiescence or concurrence in the disqualification disqualifies a person from being heard as relator. *Reg.* v. *Greene*, 2 Q. B. 460; 11 L. J. Q. B. 107.

be made after the expiration of twelve months (*b*) from the time when he became disqualified after election (*c*). 45 & 46 Vict. c. 50.

(2) In the case of such an application, or of an application for a mandamus (*d*),

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It is not necessary for the relator to be a burgess. It is sufficient for him to be an inhabitant, and subject to the government of the council. *Rex* v. *Hodge*, 2 B. & A. 344, n.; *Rex* v. *Parry*, 6 A. & E. 810; *Rex* v. *Quayle*, 11 A. & E. 508. Or to be an owner of rated property in the borough. *Reg.* v. *Briggs*, 11 L. T. N. S. 372. But the affidavit must show at whose instance the application is made; *Reg.* v. *Hedges*, 11 A. & E. 163; and that the relator has a sufficient interest. *Reg.* v. *Thirlwind*, 33 L. J. Q. B. 171; 9 L. T. (N. S.) 731.

The Court will not refuse its assistance merely on the ground of the poverty of the relator, but it may order any person acting in collusion with him to pay the costs. *Rex* v. *Wakelin*, 1 B. & Ad. 50; *Reg.* v. *William Greene*, 4 Q. B. 646; *Reg.* v. *Blizard*, *supra*. See also *Rex* v. *Trevenen*, 2 B. & Ald. 339.

Proceedings in *quo warranto* are deemed to be civil proceedings, whether for the purposes of appeal or otherwise. *Supreme Court of Judicature Act*, 1884 (47 & 48 Vict. c. 61), sec. 15. As to the practice in *quo warranto*, see Rules of the Supreme Court, 1883, Order 68, rule 2; and the Crown Office Rules, 1886, rules 49, 51-59, 83, 90-98, 134 and 135.

(*a*) **Claiming to hold a corporate office.** See sec. 7 (1) for the meaning of corporate office. Under the Met. Man. Act, 1855, sec. 54, *post*, it was held that where a vestryman became disqualified after election, a *quo warranto* would not lie against him unless he acted as vestryman after disqualification. *Reg.* v. *Williams*, *Ex parte Visger*, 64 L. J. M. C. 34; 43 W. R. 140.

(*b*) **Twelve months**, i.e., twelve calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3. Every election not called in question within twelve months after the election is deemed to have been a good and valid election. Sec. 73, *ante*. But see *De Souza* v. *Cobden*, cited in note thereto. An application, though made within the twelve months, may, in the discretion of the Court, be refused if there is unreasonable delay in making it, and no satisfactory reason is given for such delay. *Reg.* v. *Hodson*, 4 Q. B. 648; 11 L. J. Q. B. 219; *Ex parte Hindmarch*, L. R. 3 Q. B. 12; 37 L. J. Q. B. 58.

(*c*) **Disqualified after election.** Where the disqualification exists at the time of election, the mode of questioning the validity of the election is by petition; and where petition lies *quo warranto* will not lie. *Pritchard* v. *Bangor* (*Mayor, &c., of*), and *Reg.* v. *Morton*, *ante*, p. 103. As to the grounds on which an election may be questioned by petition, see sec. 87, *ante*.

(*d*) **Mandamus.** A writ of *mandamus* is, in general, a command issuing in the sovereign's name from the High Court, and directed to any person, corporation, or inferior court, requiring them to do some particular thing therein specified which appertains to their duty. It is a high prerogative writ, and issues in all cases where the party has a right to have anything done, and has no other specific means of compelling its performance. 3 Black. Com. 110.

If a municipal election is not held on the appointed day, or within the appointed time, the High Court may grant a *mandamus* for the election to be held on a day appointed by the Court. Sec. 70 (2), *ante*. A *mandamus* may be granted to fill a casual vacancy. *Reg.* v. *Stratford-upon-Avon*, 2 T. L. R. 431.

The *mandamus* must be addressed to the corporation in its corporate title. *Reg.* v. *Corporation of Pembroke*, 8 Dowl. P. C. 302.

A *mandamus* will not be granted where the office is full *de facto*, until the person has been ousted, and the vacancy has been ascertained, on a *quo warranto* information, or by election petition. *Reg.* v. *Royle*, 6 A. & E. 349; *Rex* v. *Winchester* (*Mayor, &c., of*), 7 A. & E. 215; *Reg.* v. *Derby*, *ib.* 419; *Reg.* v. *Hiorns*, *ib.* 960; *Reg.* v. *Phippen*, *ib.* 966.

Where an election has in fact been held, by an erroneous construction of the Act, for one councillor only instead of two, the candidate who was second on the poll cannot have a *mandamus* to admit him to the office. His remedy is either by *mandamus* to hold an election for a second councillor, or, if the office has been filled in the meantime, by a *quo warranto* or election petition. *Reg.* v. *Royle*, H. T. 1855.

There must be a legal right on the part of the applicant to have the duty performed. *Rex* v. *Archbishop of Canterbury*, 8 East, 213; *Ex parte Napier*, 18 Q. B. 692; 21 L. J. Q. B. 332; *Reg.* v. *Lewisham Union* (*Guardians*), *post*, p. 316. The Court, before it will grant a *mandamus*, must be convinced that there has been a demand made by a party having a right to make it, for the performance of the duty sought to be enforced, and a refusal to perform it by the party against whom the application is made. *Reg.* v. *Bristol Railway Co.*, 4 Q. B. 162; 12 L. J. Q. B. 106. And where a *mandamus* has been refused, on the ground that no demand and refusal have taken place, the Court will not grant another rule for the same purpose, although a demand

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to proceed to an election of a corporate officer (*e*), the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified or making the application.

(3) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5) The respondent may show cause in the first instance against the application.

(6) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or mandamus absolute.

(7) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster (*f*).

(8) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance (*g*).

Provisions for protection of persons acting under Act.

226.—(1) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (*h*).

(2) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action (*i*).

(3) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

227. [*Power for borough constables to take bail. Inapplicable to London. Loc. Govt. Act*, 1888, *sec.* 93, *ante.*]

PART XIII.—GENERAL.

228—229. [*Boundaries of boroughs and transfer of parts to counties. Adjustment between boroughs and counties on change of boundaries. Not applied to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16) (b), *ante.*]

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and refusal have taken place since the discharge of the former rule. *Reg.* v. *Bodmin* (*Mayor and Justices of*) (1892), 2 Q. B. 21; 61 L. J. M. C. 151.

As to the procedure to obtain the writ, see the Rules of the Supreme Court, 1883, Order lxviii, r. 2; and the Crown Office Rules, 1886, rr. 60—80 and 136.

(*e*) **Corporate officer** is not defined by this Act. Under earlier statutes a burgess was held not to be a corporate officer. *Milner, In re*, 5 Q. B. 589; 12 L. J. Q. B. 186. And a coroner, though appointed by the corporation, is the Crown's officer and not a corporate officer. *Reg.* v. *Grimshaw*, 5 D. & L. 249; 16 L. J. Q. B. 385.

(*f*) **London or Westminster.** Now the Queen's Bench Division of the High Court.

(*g*) **Peremptory in first instance.** Where an election of aldermen was held, but the whole proceedings were irregular and void, and none of the aldermen purported to have been elected made a declaration of acceptance of office, the court granted a rule absolute for a *mandamus* in the first instance for a fresh election. *Reg.* v. *Wilton* (*Mayor, &c.*), 34 W. R. 273.

(*h*) **Action to be brought within six months.** See now the Public Authorities Protection Act, 1893, sec. 1 (a) *post*, vol. ii.

(*i*) **Tender of amends.** See now the Public Authorities Protection Act, 1893, sec. 1 (c) and (d).

Time.

45 & 46 Vict. c. 50.

Time.

Computation of time.

230.—(1) Where by this Act (*k*) any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2) Where by this Act (*k*) any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3) Where by this Act (*k*) any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Distance.

Measurement of distances.

231. The distances mentioned in this Act (*k*) shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act (*k*) to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Inspection and Copies.

Inspection of documents.

233.—(1) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (*m*).

(2) A burgess may make a copy of or take an extract from an order of the council for the payment of money (*n*).

(3) The treasurer's accounts (*o*) shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4) The abstract of the treasurer's accounts (*o*) shall be open to the inspection of all the ratepayers of the borough (*p*), and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(*k*) **"This Act"** must be construed to include the Loc. Govt. Act, 1888, *ib.* sec. 75, *ante*.

(*m*) **Inspection of minutes.** It was held that the right conferred by this section includes the right to inspect the minutes of the proceedings of committees submitted to a municipal council for approval, and referred to in the council's minutes, whether approved or not. *Williams* v. *Manchester (Mayor, &c., of)*, 45 W. R. 412; 13 T. L. R. 299.

(*n*) **Order for payment of money.** For provisions regulating the orders of the county council for payments to and out of the county fund, see Loc. Govt. Act, 1888, sec. 80.

(*o*) **Treasurer's accounts.** These provisions apply to the accounts of the county council, and of the treasurer and officers of such council. Loc. Govt. Act, 1888, sec. 71 (2).

(*p*) **Inspection of accounts.** A copy of the accounts of the county council, duly made up and balanced, is required to be deposited at the county council's offices, and kept open to the inspection of all persons interested, for seven clear days before the annual audit. Loc. Govt. Act, 1888, sec. 71 (3), *ante*, and Pub. Hlth. Act, 1875, sec. 247 (4), *post*, vol. ii.

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(5) *The freeman's roll...*[*Inapplicable to county council.*]

(6) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7) If a person having the custody of any document in this section mentioned—

(a) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(b) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction (*q*), be liable to a fine not exceeding five pounds.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorised to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(a) The room where the business of the town clerk's office is transacted;

(b) The room, if any, where the justices of the borough sit for transacting their business;

(c) The room, if any, where the court of quarter sessions of the borough is held; and

(d) The room, if any, where the borough civil court is held.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a byelaw made under this Act (*r*), or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

236. [*Notice of application to and correspondence with Treasury, for approval of sale, loan, &c. Inapplicable to London. Local Government Act*, 1888, *sec.* 40 (9), *ante.*]

Deputy.

Acts of deputy not to be invalidated by defect in appointment

237. No defect in the appointment of a deputy (*s*) under this Act (*r*) shall invalidate his acts.

Overseers.

238. [*Notices to and acting of overseers.*]

Declarations and Oaths.

Power to administer oaths, &c.

239. (1) Where by or under this Act (*r*) a declaration or oath is required to be made or taken by the holder of a corporate office (*t*) or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868 (*u*).

(*q*) **Summary conviction.** See sec. 219 (1) and (2) and note thereto, *ante.*

(*r*) **"This Act"** must be construed to include the Loc. Govt. Act, 1888, *Ib.* sec. 75, *ante.*

(*s*) **Deputy.** As to the appointment of deputy chairman of the county council, see Loc. Govt. Act, 1888, sec. 88 (a) (b); of deputy clerk, see *ib.* sec. 83 (11) (b); and of deputy returning officer, see *ib.* sec. 75 (3), *ante.*

(*t*) **Corporate office** is defined by sec. 7 (1), *ante.* See secs. 34 and 35, and notes thereto, *ante*, and the Vestrymen and Auditors' (London) Election Order, 1897, sched. 5, *post*, p. 583.

(*u*) **Promissory Oaths Act, 1868.** See note to sec. 2 (5) (b) of the Loc. Govt. Act, 1888, *ante.*

45 & 46 Vict. c. 50.

Forms.

Forms in schedule.

240. The forms in the eighth schedule (*x*) or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

Misnomer or Inaccurate Description.

Misnomer or Inaccurate Descriptions.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood (*y*).

242. [*Provision for references in unrepealed enactments to* 5 *&* 6 *Will.* 4, *c.* 76, *&c.*]

243. [*Short titles of Acts partly repealed.*]

244. [*Mayor of certain boroughs to be returning officer in parliamentary elections.*]

245. [*Electors in disfranchised boroughs.* 30 *&* 31 *Vict. c.* 102.]

246. [*Explanation of terms "town corporate," &c., in Licensing Act.*]

Freedom of Trading.

Right of free trading in boroughs.

247. Notwithstanding any custom or byelaw, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough (*z*).

(*x*) **Eighth schedule.** Only form A. in sched. 8, *post*, is applied to county councils by the Loc. Govt. Act, 1888, sec. 75, *ante*.

(*y*) **Misnomer or inaccurate description.** The following cases were decided under the similar provisions of sec. 142 of the Mun. Corp. Act, 1835 :—

The total omission of the description of a candidate from the voting paper was not an "inaccurate description," and could not be cured by that section. *Reg.* v. *Tugwell* L. R. 3 Q. B. 704 ; 37 L. J. Q. B. 275. The nomination of a candidate as "William Penfold," and the description of him in some of the voting papers as "W. Penfold," was a misnomer which the provisions of that section cured. *Reg.* v. *Plenty*, L. R. 4 Q. B. 346 ; 38 L. J. Q. B. 205. Where persons were described on the burgess roll by wrong Christian names, and they voted as described, it was held that they were not guilty of personation, and that it was a case of misnomer within the section. *Reg.* v. *Thwaites*, 1 E. & B. 704 ; 22 L. J. Q. B. 238 ; see further *Reg.* v. *Spratley*, 6 E. & B. 363 ; 25 L. J. Q. B. 257. The section was held to cure only an inaccurate description of the real place of abode and did not apply where the place of abode other than the real one was stated. *Reg.* v. *Coward*, 16 Q. B. 819 ; 20 L. J. Q. B. 359. It was held not to apply to a misnomer in a nomination paper under the Municipal Elections Act, 1875, wherein the candidate was described as "Robert V. Mathers" instead of "Robert Vicars Mathers," as a nomination paper is a document which had no existence at the passing of the Mun. Corp. Act, 1835. *Mather* v. *Brown*, 1 C. P. D. 596 ; 45 L. J. C. P. 547. Where the house of a voter was a corner one, and had a door in "M" street and another in "K" street, and the voter was described on the burgess roll as of "M" street, but signed the voting paper as of "K" street, it was held that this was a misdescription "such as to be commonly understood" within the meaning of the section. *Reg.* v. *Gregory*, 1 E. & B. 600 ; 22 L. J. Q. B. 120. Describing a candidate in a voting paper as of his place of business instead of as of the place where he resided, was held to be a misdescription which could not be cured by that section. *Reg.* v. *Deighton*, 5 Q. B. 896 ; 13 L. J. Q. B. 241.

Under sec. 241, *supra*, of the present Act, where an assenting burgess was wrongly described on the roll as "Charles Burman," but signed a nomination paper with his full correct name of "Charles Arthur Burman," it was held that the defect was such as could not be cured. The words "commonly understood," mean commonly understood by any person comparing the nomination paper and the burgess roll. *Moorhouse* v. *Linney*, 15 Q. B. D. 273 ; 49 L. J. Q. B. 471. Mere misspelling of a candidate's name, e.g., "Millar" for "Miller" in a nomination paper is not a misnomer. *Miller* v. *Everton*, 64 L. J. Q. B. 692 ; 59 J. P. 358.

See further on this subject, sec. 72, *ante*, and sched. 3, part ii. *post*, and notes thereto.

(*z*) **The right of free trading** is subject to the byelaws of the local authorities for the regulation of trade. See sec. 23, and note thereto, *ante*.

45 & 46 Vict. c. 50.

248. [*Special provisions as to certain of the Cinque Ports.*]

249. [*Vice-Chancellor of Cambridge.*]

Savings.

250. [*Saving for existing corporations. See Loc. Govt. Act*, 1888, *sec.* 125, *ante.*]

251. [*Saving for local Acts. Not applied to county council. Loc. Govt. Act*, 1888, *sec.* 75 (16) (b), *ante.*]

252. [*Saving for Prison Acts* (28 & 29 *Vict. c.* 126; 40 & 41 *Vict. c.* 21; 13 & 14 *Vict. c.* 91).]

Saving for military and naval officers, &c.

253. Nothing in this Act (*a*) shall compel the acceptance of any office (*b*) or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay (*c*), or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

Saving for dockyards, barracks, &c.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

256. [*Saving for Lord Warden of Cinque Ports.*]

257. [*Saving for universities.*]

Saving for jurisdiction over cathedral precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for royal prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

260. [*Saving as to repealed enactments.*]

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THE SECOND SCHEDULE.

[*Meetings and Proceedings of Council.*]

This schedule is applied to county councils by the Loc. Govt. Act, 1888, *sec.* 75, *ante. But with respect to the London County Council the following provisions are now substituted by the London County Council* (*General Powers*) *Act*, 1893 (56 & 57 Vict. ch. ccxxi.), sec. 10; which enacts that:—

"In regard to the meetings and proceedings of the council, the provisions contained in the schedule to this Act, shall have effect in substitution for the provisions contained in the second schedule to the Municipal Corporations Act, 1882, and subject to the provisions of the said schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same."

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(*a*) **"This Act"** must be construed to include the Loc. Govt. Act, 1888. *Ib.* sec. 75, *ante.*

(*b*) **Acceptance of office.** As to the obligation to accept office or pay a fine, see sec. 33, *ante.*

(*c*) **Naval, military, or marine officers.** See note (*b*) to sec. 12 (1), *ante.*

The schedule referred to in the foregoing Act. 45 & 46 Vict. c. 50.

Meetings and Proceedings of Council.

1. The chairman may at any time call a meeting of the council.

2. If the chairman refuses to call a meeting after a requisition for that purpose signed by twenty members of the council has been presented to him, the members of the council signing the requisition may forthwith, on that refusal, call a meeting. If the chairman (without so refusing) does not within seven days after such presentation call a meeting, the said members of the council may, on the expiration of those seven days, call a meeting.

3. Forty-eight hours at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the chairman, or if the meeting is called by members of the council, by those members, shall be fixed on the offices of the council. Where the meeting is called by members of the council, the notice shall specify the business to be transacted thereat.

4. Forty-eight hours at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the clerk of the council, shall be left or delivered by post at the usual place of abode of every member of the council.

5. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

6. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except any matters of urgency brought up in accordance with any standing order made by the council.

7. At every meeting of the council the chairman of the council, if present, shall be chairman of the meeting. If the chairman be absent, then the vice-chairman or the deputy-chairman of the council shall be chairman of the meeting. If the chairman, the vice-chairman, and the deputy chairman are all three absent, then such member of the council as the members then present shall choose, shall be chairman of the meeting.

8. Unless in any case otherwise provided by statute, all acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in accordance with the provisions of this Act, the whole number present, whether voting or not, not being less than one-fourth of the number of the whole council.

9. In case of equality of votes, the chairman of the meeting shall have a second or casting vote (*d*).

10. Minutes of the proceedings of every meeting of the council shall be drawn up and printed, and shall be signed at the same or the next ensuing meeting by the chairman of the meeting at which the minutes are signed (*e*).

THE THIRD SCHEDULE.

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PART II.

Rules as to Nomination in Elections of Councillors (*f*).

1. Every candidate for the office of councillor must be nominated in writing (*g*).

(*d*) **Casting vote of chairman.** When the chairman is a county councillor elected for the City, rule 9 must be read subject to sec. 41 (6) of the Loc. Govt. Act, 1888, as amended by the Lon. Coun. Counc. (Gen. Powers) Act, 1893, set out in note thereto.

(*e*) **Minutes of proceedings.** Such minutes are receivable in evidence without further proof. Sec. 22 (5), *ante*. As to the penalty for forging such minutes, see sec. 235, *ante*.

(*f*) **Rules as to nomination.** For additional rules as to nomination, see sec. 51, *ante*. As to the effect of non-compliance with these rules, see sec. 72, *ante*; and as to misnomer or inaccurate description, see sec. 241, *ante*.

(*g*) **Nominated in writing.** Writing includes print. Sec. 7 (1), *ante*. For form of nomination papers, see sched. 8, part ii., form I., *post*.

45 & 46 Vict. c. 50.

2. The writing must be subscribed by two burgesses (*h*) of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination.

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more (*i*).

4. Each person nominated must be enrolled in the burgess roll or entered in the separate non-resident list required by this Act to be made (*k*).

5. The nomination paper must state the surname and other names (*l*) of the candidate, with his abode and description.

6. The *town clerk* (*m*) shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required, and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate (*n*), or his proposer or seconder, at the *town clerk's office* (*o*), seven days

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(*h*) **Subscribed by two burgesses.** The subscribers may sign with the initials of their Christian names. *Reg.* v. *Avery*, 18 Q. B. 576; *Bowden* v. *Besley*, 21 Q. B. D. 309; 57 L. J. Q. B. 473. The signature of "Charles Arthur Burman," who was wrongly described on the burgess roll as "Charles Burman," was held to vitiate the nomination paper. *Moorhouse* v. *Linney*, *ante*, p. 113. But where a person's name was incorrectly entered on the burgess roll as "Henry D. Evereux Davenport," and he subscribed the nomination paper as "Henry D. Davenport," it was held good. *Harding v. Cornwell*, 60 L. T. (N. S.) 959. The addition of the word "junr." to the subscriber's signature, though that word does not appear after his name on the register, is good. *Gledhill* v. *Crowther*, 23 Q. B. D. 136; 58 L. J. Q. B. 327. The nomination paper must be filled in before being signed, and must be subscribed by the proposer before the seconder, and by the seconder before the assenting burgesses. *Harmon* v. *Park*, 7 Q. B. D. 369; 50 L. J. Q. B. 775. The numbers on the roll of the subscribing burgesses must be correctly stated. *Gothard* v. *Clarke*, 5 C. P. D. 253; 49 L. J. C. P. 474.

(*i*) **As many nomination papers as vacancies.** A person cannot sign more than one nomination paper for each candidate. See rule 10, *infra*, and note thereto. If a person signs more nomination papers than there are vacancies, the papers first delivered up to the number of vacancies are valid, and the remainder are invalid. *Burgoyne* v. *Collins*, 8 Q. B. D. 450; 51 L. J. Q. B. 335. An elector must not subscribe a nomination paper in or for more than one ward or electoral division. Sec. 51 (2), *ante*.

(*k*) **Persons nominated must be enrolled.** In order to be qualified for election, a person must not only be enrolled, but must also be entitled to be enrolled. Sec. 11 (2) (a), *ante*. There is no separate non-resident list in the case of the Metropolis. See sec. 49, *ante*, and Loc. Govt. Act, 1888, sec. 77, and notes thereto, *ante*. Peers owning property in the county and persons registered as parliamentary voters in respect of the ownership of property of whatsoever tenure situate in the county are also qualified to be county aldermen or county councillors. *Ib.* sec. 2 (2), (b).

(*l*) **Surname and other names.** All the names of the candidate should be stated in full, and not the initials only of his Christian name. *Mather* v. *Brown*, *ante*, p. 113. It was there decided that the initial of the candidate's Christian name on the nomination paper was a misnomer which could not be cured by sec. 142 of the Mun. Corp. Act, 1835, which did not apply to nomination papers, as they had no existence at the passing of that Act. But *quære* whether such a misnomer would not now be cured by sec. 241, *ante*, which is similar in terms to sec. 142 of the earlier Act. A contraction of the Christian name such as is commonly understood, e.g., "Wm." for "William," is good. *Reg.* v. *Bradley*, 3 E. & E. 634; 30 L. J. Q. B. 180. *Henry* v. *Armitage*, 12 Q. B. D. 257; 53 L. J. Q. B. 111. The mere misspelling of the candidate's name, e.g., "Millar" for "Miller," will not invalidate the nomination paper. *Miller* v. *Everton*, *ante*, p. 113. The place of abode means the place of residence, not of business. *Reg.* v. *Deighton*, *ante*, p. 113; *Reg.* v. *Hammond*, 17 Q. B. 772; 21 L. J. Q. B. 153; and see also *Northcote* v. *Pulsford*, L. R. 10 C. P. 476. Where the name of a street had been altered, and the abode of the seconder was described on the roll by the new name of the street, but in subscribing the nomination paper he described his abode by the old name, the nomination was held valid. *Soper* v. *Mayor of Basingstoke*, 2 C. P. D. 440; 46 L. J. C. P. 422.

(*m*) **Town clerk; mayor.** For "town clerk" and "mayor" substitute "returning officer or his deputy" in county council elections. Loc. Govt. Act, 1888, sec. 75 (4) (5), *ante*.

(*n*) **Delivered by candidate.** Delivery by an agent is not sufficient. *Monks* v. *Jackson*, *infra*.

(*o*) **Town clerk's office; town hall.** For "town clerk's office" and "town hall," substitute "some place fixed by the returning officer or his deputy in the electoral division or in an adjoining electoral division," in county council elections. Loc. Govt. Act, 1888, sec. 75 (7), *ante*.

at least before (*p*) the day of election, and before five o'clock in the afternoon (*q*) of the last day for delivery of nomination papers.

8. The *town clerk* (*r*) shall forthwith send notice of every such nomination to each candidate.

9. The *mayor* (*r*) shall attend at the *town hall* (*s*) on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon (*q*), and shall decide on the validity of every objection (*t*) made in writing to a nomination paper.

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered (*u*).

11. Each candidate may, by writing signed by him, or, if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the *mayor* (*r*) on behalf of the candidate, and this appointment must be delivered to the *town clerk* (*r*) before five o'clock in the afternoon (*q*) of the last day for delivery of nomination papers.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the *mayor* (*r*), shall be entitled to attend the proceedings before the *mayor* (*r*).

13. Each candidate and his representative may, during the time appointed for the attendance of the *mayor* (*r*), for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the *mayor* shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return (*x*).

15. The *town clerk* (*r*) shall, at least four days before (*y*) the day of election, cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall (*z*), and in the case of a ward election, in some conspicuous place in the ward (*a*).

(*p*) **Seven days at least before,** i.e., clear days, excluding both the day of notice and the day of election. See note (*m*) to sec. 54, *ante*. As to Sundays, Christmas Day, &c., see sec. 230, *ante*.

(*q*) **Five o'clock; two and four.** Greenwich time. Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9).

(*r*) **Town clerk; mayor.** See note (*m*) on page 116.

(*s*) **Town clerk's office; town hall.** See note (*o*) on page 116.

(*t*) **Validity of objection.** As to what objections come within the jurisdiction of the returning officer, see rule 14 and notes thereto, *infra*.

(*u*) **More nomination papers than one.** This rule applies where a person signs more nomination papers than one for the same candidate. It does not prevent a burgess subscribing as many nomination papers as there are vacancies, under rule 3, *supra*, where there are several vacancies. *Line* v. *Warren*, 14 Q. B. D. 73, 548; 54 L. J. Q. B. 146, 291.

(*x*) **Decision of mayor.** The only office of the mayor (or returning officer) is to decide objections to the nomination paper itself. He has no jurisdiction to entertain an objection to the qualification of the candidate, which is a question which can only be determined by election petition. *Pritchard* v. *Bangor (Mayor, &c., of)*, 13 App. Cas. 241; 57 L. J. Q. B. 313. It was held, under an earlier Act, that the mayor could not entertain an objection that the nomination paper was not delivered at the town clerk's office in time (*Howes* v. *Turner*, 1 C. P. D. 671; 45 L. J. C. P. 550); but that an objection that the nomination paper was delivered by an agent was cognisable by him. *Monks* v. *Jackson*, 1 C. P. 683; 46 L. J. C. P. 162. If a returning officer disallows an objection which he has no power to entertain, his decision may be questioned on petition. *Howes* v. *Turner*, *supra*. An erroneous decision upon the validity of an objection to a nomination paper given *bonâ fide* by a mayor is not misconduct, and he cannot upon that ground be made respondent in an election petition. *Harmon* v. *Park*, 6 Q. B. D. 323; 50 L. J. Q. B. 227. It is doubtful whether a returning officer would be liable to be made respondent in such a case. *Per* Lord Selborne, L. C., *ib.*, p. 328.

(*y*) **At least four days before,** i.e., clear days, exclusive both of the day of fixing the names on the town hall and the day of election. See note (*m*) to sec. 54, *ante*. Sundays, Christmas Day, &c., are not included. Sec. 230, *ante*.

(*z*) **Fixed on town hall.** See sec. 232, *ante*.

(*a*) **Ward.** For "ward" substitute "electoral divisions" in council elections.

45 & 46 Vict. c. 50.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before (*b*) the day of his nomination in the presence of two witnesses is produced at the time of his nomination (*c*).

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him, and delivered at the *town clerk's office* (*d*) not later than two o'clock in the afternoon (*e*) of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

PART III.

Modifications of the Ballot Act in its Application to Municipal Elections (*f*).

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer (*g*), the use of a room for taking a poll (*h*) and the right to vote of persons whose names are on the register of voters (*i*) and rules 16 and 19 in the schedule to that Act (*k*), shall not apply in the case of a municipal election.

2. The *mayor* (*l*) shall, at least four days before (*m*) the day of election, give public notice (*n*) of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The *mayor* (*l*) shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the

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(*b*) **Within one month before,** i.e., calendar month. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3.

(*c*) **Produced at time of nomination.** Where a candidate was nominated during his absence from the United Kingdom, and his written consent was not produced at the time of nomination, his subsequent election was declared void, and the rival candidate, who had been duly nominated, was held entitled to the seat. *Brown* v. *Benn*, 53 J. P. 167; 5 T. L. R. 247.

(*d*) **Town clerk's office; town hall.** See note (*o*) on page 116.

(*e*) **Two o'clock,** i.e., Greenwich time. Statutes (Definition of Time) Act, 1880.

(*f*) **Modifications of Ballot Act.** See sec. 58, *ante*.

(*g*) **Voting of returning officer.** The provisions of the Ballot Act, 1872, with respect to the right of a returning officer to vote, are contained in the last paragraph of sec. 2, and are replaced by sec. 58 (5), of the present Act, *ante*.

(*h*) **Room for taking poll.** The Ballot Act, 1872 (35 & 36 Vict. c. 33), sec. 6, empowers the returning officer at a parliamentary election to use, free of charge, for the purpose of taking the poll at such election, any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of a local rate. That section is applied in the case of county council elections by the Loc. Govt. Act, 1888, sec. 75 (16) (g), *ante*, which also empowers the returning officer to use such room, free of charge, for hearing objections to nomination papers and for counting votes.

(*i*) **Right to vote,** i.e., sec. 7 of the Ballot Act, 1872, which is replaced by sec. 51, *ante*.

(*k*) **Rules 16 and 19 in schedule to Ballot Act** are replaced by rules 4 and 2 respectively of the present schedule, *infra*.

(*l*) **Mayor.** For "mayor" substitute "returning officer or his deputy" at county council elections. Loc. Govt. Act, 1888, sec. 75 (4).

(*m*) **At least four days before,** i.e., four clear days, exclusive of the day of election and the day of notice. See note to rule 7, *ante*.

(*n*) **Public notice.** Matters necessary for several wards or electoral divisions may be comprised in one notice. Sec. 65, *ante*.

purpose of a poll (*o*), and shall appoint officers for taking the poll and counting the votes. 45 & 46 Vict. c. 50.

4. The *mayor* (*p*) shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the *mayor* (*p*) may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided (*q*).

6. No return shall be made to the clerk of the Crown in Chancery.

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THE EIGHTH SCHEDULE.

FORMS.

PART I.—*Declarations on accepting Office.*

FORM A. (*r*).

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, *A.B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

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PART II.—*Forms relating to Elections.*

FORM H. (*s*).

NOTICE (*t*).

Borough of . Election of [councillors, *or* elective auditors, *or* revising assessors, *as the case may be*] for the [ward or several wards of the] borough.

Take Notice,

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [ward or several wards of the] said borough will be held on the day of

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

(*o*) **Everything required.** The things required to be provided by the returning officer are prescribed by the Ballot Act, 1872 (35 & 36 Vict. c. 33), secs. 8 and 14, and sched. 1, part i., rules 15 and 20.

(*p*) **Mayor.** See note (*l*) on page 118.

(*q*) **Expenses of election.** The provisions for defraying the expenses of elections are contained in sec. 140, and sched. 5, part ii. But these provisions are not incorporated in the Loc. Govt. Act, 1888; and by sec. 75 (17) of that Act, *ante*, the costs relating to county council elections are to be paid out of the county fund as general expenses.

(*r*) **Form A.** Incorporated in the Loc. Govt. Act, 1888, by sec. 75 of that Act, *ante*. See further as to this declaration, secs. 34, 35, 72, 240, and 241 of the present Act, *ante*.

(*s*) **Forms H. and I.** Part ii. of sched. 8 is not specifically incorporated in the Loc. Govt. Act, 1888. But the forms H. and I. would appear to be applicable to county council elections, with the necessary modifications, having regard to secs. 2 and 75 of that Act, and sec. 240 of the present Act, *ante*. See also *Marton* v. *Gorrill*, *ante*, p. 101. The remaining forms in this schedule are inapplicable.

(*t*) **Notice of election.** See secs. 54, 72, 240, and 241, *ante*.

45 & 46 Vict. c. 50.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(*Set out Form I.*)

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or* ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of 18 .

A.B., Town Clerk.

FORM I. (*u*).

NOMINATION PAPER (*x*).

Borough of . Election of councillors [elective auditors, or revising assessors] for ward in the said borough [*or* the said borough] to be held on the day of 18 .

We, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

We, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this day of 18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

(*u*) **Forms H. and I.** See note (*s*) on page 119.

(*x*) **Nomination paper.** See sched. 3. part ii., rules 1—5, and secs. 72. 240. and 241, *ante*.

COUNTY COUNCILS (ELECTIONS) ACT, 1891.

54 & 55 Vict. c. 68. An Act to alter the Date of holding County Council Elections, and to remove Doubts respecting the Holding of such Elections. [5th August, **1891**

Change of date of elections.

1.—(1) The ordinary day of election of county councillors in each county shall be such day between the first and eighth day of March as the county council may fix, and, if no date is fixed, shall be the eighth day of March (*a*).

(2) The ordinary day of retirement of county councillors shall be the eighth day of March in every third year, and on that day the county councillors then in office shall retire together, and their places shall be filled by the newly-elected councillors, who shall come into office on that day (*a*).

(3) The sixteenth day of March or such other day within ten days after the ordinary day of retirement of county councillors as the council of any county may from time to time fix for that county, shall, in substitution for the ninth day of November, be the ordinary day of election of the chairman, and of the aldermen (*b*), *and the day for holding a quarterly meeting, and if the county council fix any hour for the quarterly meeting, that hour shall be substituted for the hour specified in the Municipal Corporations Act*, 1882 (*c*).

45 & 46 Vict. c. 50.

(4) All periods which, in the enactments of the Municipal Corporations Act, 1882, are computed by reference to the first or ninth day of November shall, so far as those enactments apply to county councils, be computed by reference to such of the above-mentioned days then next following as the case requires.

The ordinary day of election of councillors shall be fixed by the county council not less than six weeks before the ordinary day of retirement of county councillors.

Nothing shall authorise or require a returning officer to hold an election of a county councillor to fill a casual vacancy which occurs within six months before the ordinary day of retirement of county councillors.

County registers.

2.—(1) The county register shall be completed before the twentieth day of December in every year and come into operation on the next first day of January.

(2) The burgess lists forming the burgess roll, which comes into operation on the first day of November in every year, shall on and after that day until the next first day of January form part of the county register in substitution for the former burgess lists (*d*).

3. [*Removal of doubts and amendment as to election of county councillors in municipal boroughs.*]

4. [*Extension of term of office of first county aldermen and county aldermen to March 8th*, 1892. *Spent.*]

Amendment of 45 & 46 Vict. c. 50, ss. 34, 35; and 51&52 Vict. c. 41, s. 75.

5. The declaration required under sections thirty-four and thirty-five of the Municipal Corporations Act, 1882, to be made by a person elected to a corporate office in a county may be made at any time within three months after notice of the election, and such declaration may be made either in the manner prescribed by the Local Government Act, 1888, or before any justice of the peace or commissioner to administer oaths in the Supreme Court of Judicature.

Returning officer not disqualified for membership of county council.

6. It is hereby declared that a person shall not be disqualified, nor be deemed ever to have been disqualified, under section twelve of the Municipal Corporations Act, 1882, for being a member of a county council by reason only of his being appointed returning officer by that council, except where

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(*a*) **Election and retirement of county councillors.** See the Loc. Govt. Act, 1888, sec. 2 (2) (d), and the Mun. Corp. Act, 1882, sec. 13, *ante*.

(*b*) **Election of chairman and aldermen.** See the Mun. Corp. Act, 1882, secs. 14, 15, 60, and 61, *ante*.

(*c*) **Quarterly meeting.** The words in italics are inapplicable to the London County Council. See note to sec. 60 (1) of the Mun. Corp. Act, 1882, *ante*.

(*d*) **Completion of county register.** See the Mun. Corp. Act, 1882, sec. 45 (2), *ante*.

54 & 55 Vict. c. 68.

he has directly or indirectly by himself or his partner received any profit or remuneration in respect of such appointment.

Repeal.

7. The Act specified in the schedule to this Act is hereby repealed to the extent in the third column of that schedule mentioned.

Short title and construction.

8. This Act may be cited as the County Councils (Elections) Act, 1891, and shall be construed as one with the Local Government Act, 1888.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Section seventy-five, from "In a year "in which" to "be conducted to-"gether," being sub-section one; from "In a borough the returning officer" down to "construed to refer to the "town clerk," being sub-section six; and from "The period between" down to "returning officer may fix," being sub-section nine; and from "The seventh of November" to "quarterly meeting of the county "council," being sub-section thirteen; and from "shall authorise or "require" to "such electoral division "or," being paragraph (d) of sub-section sixteen.

METROPOLIS MANAGEMENT ACT, 1855 (*a*).

18 & 19 Vict. c. 120. An Act for the better Local Management of the Metropolis. [14th August, **1855**

[*Preamble. Rep.* 55 *&* 56 *Vict. c.* 19. *Statute Law Revision.*]

1. [*Repeal of* 1 *&* 2 *Will.* 4, *c.* 60 (*Hobhouse's Act*), *so far as regards parishes in schedules* (*A.*) *and* (*B*). *Rep.* 38 *&* 39 *Vict. c.* 36 (*Statute Law Revision*).]

Vestries in parishes named in either of the schedules (A.) and (B.) to consist of not less than 18 or more than 120 persons qualified and elected as after provided.

2. The vestry in every parish mentioned in either of the schedules (A.) and (B.) to this Act shall consist of a certain number of persons qualified and elected as herein provided; (that is to say) eighteen vestrymen for every parish in which the number of rated householders (*b*) shall not exceed one thousand; and six additional vestrymen, that is, twenty-four vestrymen, for every parish in which the number of rated householders shall exceed one thousand; and twelve additional vestrymen, that is, thirty-six vestrymen for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case the number of vestrymen shall exceed one hundred and twenty: Provided also, that the incumbent and churchwardens of each such parish shall constitute a part of the vestry, and shall vote therein, in addition to the elected vestrymen: Provided also, that every district rector now constituting in any such parish a part of the vestry thereof shall continue to constitute a part of the vestry thereof under this Act: Provided also, that where in any parish the whole number of persons qualified to be vestrymen shall not amount to eighteen, the vestry thereof shall consist of so many persons as are so qualified, anything in this Act to the contrary notwithstanding.

Such parishes with more than 2,000 rated householders to be divided into wards.

3. Each of the said parishes which at the time of the passing of this Act contains more than two thousand rated householders shall be divided into wards (*c*); and it shall be lawful for such person or persons as may be appointed for this purpose as herein provided to determine and set out, on or before the tenth day of October next, the number, extent, limits, and boundary lines of such wards, but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole

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(*a*) **Short title.** The above short title is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*b*) **Householder.** For a person to be a householder, so as to be qualified to act as a commissioner under 26 Geo. 3, c. 38, it was held to be sufficient for him to own or rent a dwelling-house, to pay the rates and taxes for it, and to have it occupied by his clerk, servant or partner, without actually residing or sleeping there himself. *Rex* v. *Hall*, 1 B. & C. 123. The same qualification was held to constitute a person a householder within the meaning of 43 Eliz. c. 2, so as to render him liable to serve the office of overseer. *Rex* v. *Poynder*, 1 B. & C. 178. If a servant occupies a house of his master without paying rent, then, where the occupation is ancillary to, and a necessary part of, his service, the occupation is that of the master; but where it is not, the occupation is that of the servant, and the servant is the householder. *Reg.* v. *Spurrell*, L. R. 1 Q. B. 72; *Smith* v. *Seghill*, L. R. 10 Q. B. 422.

(*c*) **Division into wards.** The division into wards of parishes which are subsequently found to contain more than 2,000 rated householders is provided for by the Met. Man. (Amend.) Act, 1862, sec. 41, *post*. The Lon. Coun. Counc. (Genl. Powers) Act, 1893, sec. 15, *post*, p. 524, empowers the County Council, subject to certain conditions, to rearrange and determine the number, boundaries, &c., of the wards in any parish. As to the power of the County Council to alter the number of vestrymen assigned to any ward, see sec. 5, *post*.

18 & 19 Vict. c. 120.

number of wards in any parish shall not exceed eight (*d*); and the person or persons setting out such wards in any parish shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in his or their judgment it is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three; and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal Secretaries of State, and also to the vestry clerk of the parish to which such division and apportionment relate; and if Her Majesty, by the advice of Her Privy Council, approve of such division and apportionment, the particulars thereof shall be published in the London Gazette (*e*); and the parish shall, after such publication, be deemed to be divided into such wards so determined and set out, and such division shall continue and be in force until the same be altered as herein provided; and the number of vestrymen assigned to each ward shall be the number to be elected for such ward until altered as aforesaid: Provided always, that if Her Majesty, by advice of Her Privy Council, do not approve such division and apportionment, such publication as aforesaid shall nevertheless be made, and such division and apportionment be in force for the purpose of any election under the provisions of this Act, until such time as Her Majesty, by advice of Her Privy Council, upon further information and report from any such person or persons, definitely approve the division of such parish into wards, and of the number of vestrymen assigned to each ward in manner hereinbefore mentioned: Provided also, that where any parish is already divided into wards under any local Act such parish shall be deemed to be divided into such wards for the purposes of this Act, without any division of such parish into wards being made as hereinbefore provided, but the number of vestrymen to be elected for such parish shall be apportioned as aforesaid among the wards of such parish by such person or persons as may be appointed for that purpose as herein provided.

4. [*Secretary of State to appoint persons to set out the wards, and apportion number of vestrymen to be elected. Rep.* 38 *&* 39 *Vict. c.* 66 (*Stat. Law. Rev.*).]

If relative amounts of population of wards vary in any future census, the numbers of vestrymen may be altered.

5. When at any time, upon any account taken of the population by the authority of Parliament, the relative numbers of the inhabited houses in the several wards of any parish divided into wards as aforesaid are found to have varied from those shown by the last previous census, it shall be lawful for the *Metropolitan Board of Works* (*f*), upon the application of the vestry or any ratepayers of such parish, to alter the number of vestrymen assigned to such wards or any of them, but so that the number of vestrymen assigned to each ward shall be a number divisible by three.

6. [*Qualification of vestrymen. Rep. and provisions substituted by Loc. Govt. Act*, 1894, *post.*]

(*d*) **Shall not exceed eight.** On the rearrangement of wards by the County Council, this limit is removed. Lon. Coun. Counc. (Genl. Powers) Act, 1895, sec. 42, *post*, p. 524.

(*e*) **London Gazette.** See the supplement to the *Lond. Gaz.* of October 19th, 1855, for the Orders in Council under this section.

(*f*) **Met. Bd. of Wks.** Now the Lon. Coun. Counc. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

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7. The . . . election of vestrymen under this Act in every parish (*g*) . . . shall take place annually in the month of May in every year as the vestry appoint.

As to the election of vestrymen under this Act.

8. At the first such election of vestrymen as aforesaid for any parish the full number of elective vestrymen of which such vestry is to consist as hereinbefore mentioned shall be elected, and such vestrymen, with such other persons as hereinbefore mentioned shall forthwith be deemed to constitute the vestry of such parish, and shall supersede any existing vestry therein, and exercise the powers and privileges held by such existing vestry, save as in this Act otherwise provided (*h*); and the authority of such vestry may be pleaded before any justice or justices of the peace or in any court of law in regard to all parochial property or moneys due, or holdings or contracts, or other documents of the like nature, under the control or in the keeping of such existing vestry; and all parish officers or boards shall account to them in like manner as they are by law liable to account to such existing vestry.

The full number of vestrymen to be chosen at first election, and existing vestries superseded.

As to the term of office of vestrymen.

9. (*i*) . . . all members from time to time elected at the annual elections . . . shall go out of office at the time appointed for the annual election in the third following year, except such members as are elected to supply vacancies occasioned otherwise than by effluxion of time; and such last-mentioned members shall go out of office at the respective times when the terms of office of the members in whose places they are respectively elected would have expired by effluxion of time.

Vacancies to be filled up at annual elections.

10. At every election of vestrymen under this Act, . . . for any parish or any ward of any parish, the parishioners of such parish entitled to vote (*k*) in such election shall elect as many vestrymen as there are vacancies in the vestry, or among the vestrymen elected for such ward, whether such vacancies be occasioned by the expiration of the term of office, or by death or otherwise (*l*).

Appointment of auditors of accounts for parishes in schedules (A.) and (B.).

11. For every parish mentioned in either of the schedules (A.) and (B.) to this Act there shall be elected such number as hereinafter mentioned of the ratepayers of the parish who have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected at the same times and in the same manner as members of the vestry (*m*); and the number of ratepayers so to be elected auditors in any parish not divided into wards under this Act shall be five, and the number of rate-

(*g*) **Section 7.** The omitted portions of this section are repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(*h*) **Powers and privileges.** See Met. Mant. (Amendmt.) Act, 1856 (19 & 20 Vict. c. 112), sec. 3, *post*, as to what powers and privileges are transferred by this section. As to the savings in this Act otherwise provided, see secs. 90 and 91, *post*.

(*i*) **Section 9.** The omitted parts of this section are spent, and are repealed by 38 & 39 Vict. c. 66, and 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(*k*) **Entitled to vote.** As to who is entitled to vote, see Loc. Govt. Act, 1894, secs. 23 (3) and 31 (1), *post*, p. 534. Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected (*ib.* sec. 23 (4)); but must not vote in more than one ward. *Ib.* sec. 48 (2) (ii), and the Vest. and Aud. (Lond.) Electn. Order, 1897, rule 27 (2), *post*, p. 566.

(*l*) **Casual vacancies.** As to filling casual vacancies, see the Loc. Govt. Act, 1894, sec. 48 (4), *post*, p. 539, and the Vestrymen and Auditors (London) Election Order, 1897, rule 22, and sched. 5, *post*, p. 565.

(*m*) **Election of auditors and vestrymen.** For the qualifications and disqualifications for being a vestryman or auditor, and the mode of their election, see the Loc. Govt. Act, 1894, secs. 23, 31, 46, and 48, *post*, p. 534, and the Vestrymen and Auditors (London) Election Order, 1897, *post*, p. 560.

18 & 19 Vict. c. 120.

payers so to be elected auditors in any parish which is divided into wards shall be the same as the number of wards, one auditor being elected in each ward: Provided always, that where the number of wards into which any parish is divided exceeds five, the vestry of such parish shall at their first meeting after the election of auditors as aforesaid, in any year, elect by ballot from among such auditors five of them, and the five persons so elected by ballot shall be the auditors for such parish exclusively of any other person or persons who may have been elected an auditor or auditors for such parish under the provisions herein contained; and a list of the five persons so elected by the vestry shall be forthwith published by the churchwardens in the parish as herein provided: Provided also, that no person shall be eligible to fill the office of auditor of accounts who is not qualified to fill the office of vestryman for the parish; but no person shall be eligible to fill the office of auditor who is a member of the vestry; and if any person be chosen to be both a member of the vestry and auditor of accounts he shall be incapable of acting as a vestryman.

As to the term of office of auditors.

12. The auditors . . . elected under this Act in any parish as aforesaid (*n*) . . . shall go out of office at the election of vestrymen and auditors in the year next following their election.

13—27. [*Election of vestrymen and auditors. Rep. and provisions substituted by the Loc. Govt. Act*, 1894, *post.*]

Quorum of vestries.

28. All powers or duties to be performed by the vestry of any parish under this Act may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there being not less than five vestrymen present at a meeting of a vestry which consists of not more than eighteen elected vestrymen, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four elected vestrymen and no more, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and at every such meeting all questions shall be decided by the votes of the majority of the vestrymen present (*o*), and the vestry may act notwithstanding any vacancies therein.

Meetings not to be holden in the church.

29. In any case in which the vestry-room of any such parish as aforesaid is not sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish, but not in the church or chapel thereof.

(*n*) **Section 12.** The omitted words are repealed by 55 & 56 Vict. c. 19 (Stat. Law. Rev.).

(*o*) **Majority of vestrymen present.** A majority of those *voting* is not sufficient, unless it is also a majority of those *present*. *Eynsham, In re*, 12 Q. B. 398; 18 L. J. Q. B. 210; *Reg.* v. *Overseers of Christchurch*, 27 L. J. M. C. 23. See also *Ex parte Orde, In re Horsley*, L. R. 6 Ch. 881. But art. 4 of the Sanitary Officers (London) Order, 1891, *post*, p. 374, issued by the Loc. Govt. Bd. by virtue of the powers conferred on them by sec. 108 of the Pub. Hlth. (Lndn.) Act, 1891, *post*, orders that every medical officer and sanitary inspector appointed under that Act shall be appointed by a majority of those "present and voting." *Quære* whether that article is *ultra vires*. It will be safer for vestries to follow the requirements of the present section when appointing such officers. The decision may be determined by a show of hands or by a subsequent division or poll. *Tear* v. *Freebody*, 4 C. B. (N. S.) 228. For the purpose of a resolution for transferring powers as to sewerage to the county council, under sec. 89, *post*, it is necessary to obtain a majority at a meeting of which fourteen days' notice shall have been given, and at which not less than two-thirds of the whole number of the vestry or district board shall be present.

18 & 19 Vict. c. 120.

Meeting to elect a chairman.

30. At every meeting of any vestry under this Act, in the absence of the persons authorised by law (*p*) . . . to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business, and the chairman, in case of an equality of votes on any question, shall have a second or casting vote.

Formation of Parishes into Districts, and Constitution of District Boards.

Parishes in schedule (B.) to be united, and form districts, and district boards constituted.

31. For the purposes of this Act the several parishes mentioned in the second column of schedule (B.) to this Act shall be united, and form the respective districts mentioned in conjunction therewith and named in the first column of the same schedule; and there shall be a board of works for each such district, composed of the members elected as hereinafter mentioned for the parishes forming such district.

32. [*First election of district boards. Rep.* 55 *&* 56 *Vict. c.* 19 (*Statute Law Revision*).]

If relative numbers of inhabited houses in parishes in any district vary on any future census, the numbers of members may be altered.

33. When at any time hereafter, upon any account taken of the population by the authority of Parliament, the relative numbers of the inhabited houses in the several parishes forming any such district are found to have varied from those shown by the last previous census, it shall be lawful for the *Metropolitan Board of Works* (*q*) constituted by this Act, upon the application of the vestry or any ratepayers of any such parish, to alter the number of the members of the board of works for such district to be elected for all or any of the parishes therein; but so that the number of members to be elected for any such parish, if exceeding three, shall be a number divisible by three.

As to the term of office of members of district boards elected at first election, and as to future elections.

34. One-third of the members of any such board first elected for any parish for which three or more such members are by this Act appointed to be elected shall go out of office at the time hereinafter appointed for the election of members of such board in the year one thousand eight hundred and fifty-seven, one other third of them at the time appointed for such election in one thousand eight hundred and fifty-eight, and the remaining third at the time appointed for such election in the year one thousand eight hundred and fifty-nine; (*r*) . . . and all members elected to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office at the election of members of such board in the third following year.

35. [*Annual elections to district boards. Rep. by Met. Man.* (*Amend.*) *Act*, 1862, *sec.* 40, *post.*]

Provision as to parishes not electing as many as three members of a district board.

36. The members of any such board first elected for parishes for which less than three members are by this Act appointed to be elected shall go out of office on the said first Wednesday in June, one thousand eight hundred and fifty-nine, and members subsequently elected for such parishes to supply vacancies occasioned by members going out of office at the expiration of their term of office shall go out of office on the first

(*p*) **Authorised by law.** The person authorised by law to take the chair is the chairman elected for the year at the first meeting after the annual election. Loc. Govt. Act, 1894, sec. 31 (2), *post*, p. 534.

(*q*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*r*) **Section 34.** The omitted words are repealed by 38 & 39 Vict. c. 66 (Stat. Law Rev.).

18 & 19 Vict. c. 120.

Wednesday in June in the third year following their election; and the vestries of such parishes shall on the said first Wednesday in June in the year one thousand eight hundred and fifty-nine, and in every third following year, elect members in the place of the members then going out of office.

Provision as to casual vacancies.

37. When any member of any district board dies, resigns, or ceases to be such member, otherwise than by the expiration of his term of office, the vestry of the parish for which he was elected shall with all convenient speed elect a person to be a member of such board in his place; and every member of any such board elected to supply any such vacancy shall go out of office when the term of office of the member in whose place he is elected would have expired by effluxion of time.

Powers of district boards to be exercised at meetings, not less than seven members being present.

38. All powers and duties vested in the board of works for any district may be exercised or performed at any meeting of such board holden under this Act, there being not less than seven members of the board present; and at every such meeting all questions shall be decided by the votes of the majority of the members present (*s*); and the board may act notwithstanding any vacancies therein, and notwithstanding any omission to elect any member or members of such board, in pursuance of this Act.

Ordinary meetings of district boards.

39. . . . Every ordinary meeting shall be holden on and at such day, time, and place as the board may from time to time appoint in this behalf (*t*).

Special meetings of district boards.

40. A special meeting of any such board may be convened by any five members of the board, or by the clerk of the board, upon the requisition in writing of five members of the board, by a notice to the several members thereof forty-eight hours at least before the time of meeting, such notice to be signed by the members or clerk convening the meeting, and to specify the object thereof (*x*).

Chairman to be elected at meeting of board.

41. Every such board shall at every meeting of such board, before proceeding to business, elect a chairman (*y*) of such meeting, and such chairman, in case of an equality of votes on any question, shall have a second or casting vote.

Incorporation of Vestries and District Boards.

District boards and vestries of parishes in schedule (A.) incorporated.

42. The board to be constituted as aforesaid for every such district shall be a body corporate by the name of "The Board of Works for the District," and the vestry of every parish mentioned in schedule (A.) to this Act shall be a body corporate by the name of "The Vestry of the Parish of in the County of ," and every such board and vestry shall by such name respectively have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this Act.

(*s*) **Majority present.** See note to sec. 28, *ante*.

(*t*) **Meetings.** See also the Met. Man. (Amend.) Act, 1862, sec. 37, *post*. The words omitted from the above section (39) are repealed by 38 & 39 Vict. c. 66 and 55 & 56 Vict. c. 19 (Statute Law Revision).

(*x*) **Specify object.** See *Reg.* v. *Salop JJ.*, 29 J. P. 260; and *Reg.* v. *Powell*, L. R. 8 Q. B. 403; 42 L. J. M. C. 129.

(*y*) **Chairman.** Each district board, at its first meeting after the annual election, is required to elect a chairman for the year, and the above section applies only in his absence. Loc. Govt. Act, 1894, sec. 31 (2), *post*, p. 534.

43—53. [*Constitution, incorporation, and meetings of Metropolitan Board of Works. Rep.* 56 & 57 *Vict. c.* 19 (*Stat. Law Rev.*). *The Met. Bd. Wks. was abolished, and its powers, duties, and liabilities were transferred to the London County Council, by the Loc. Govt. Act,* 1888, *sec.* 40 (8), *ante.*] 18 & 19 Vict. c. 120.

Provisions concerning Constitution, Procedure, and Officers of District Boards and Vestries.

54. [*Disqualifications of members of Met. Bd. Wks., district boards and vestries. Rep. and replaced by Loc. Govt. Act,* 1894, *post.*]

Members of district boards, and of vestries of parishes in schedule (A.) or (B.), may resign.

55. Any member of (*z*) . . . any vestry elected for any parish mentioned in schedule (A.) or (B.) to this Act, or of the board of works for any district, may at any time resign his office (*z*) . . . such resignation of any vestryman or member of any such district board to be notified in writing signed by such vestryman or member to the churchwardens of the parish for which he was elected (*a*).

Retiring members of boards and vestries may be re-elected.

56. Any member of (*z*) . . . any district board of works, or of any such vestry, going out of office, shall, if qualified, be capable of immediate re-election (*b*).

No resolution of any district board, or of any vestry, to be revoked at a subsequent meeting, unless under certain circumstances.

57. No resolution or other act of (*z*) . . . the board of works for any district, or of any such vestry, shall be revoked or altered (*c*) at any subsequent meeting, unless such subsequent meeting be specially convened (*d*) for the purpose, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the members of the board, or of the vestrymen present at such subsequent meeting, if the number of members or vestrymen present at such subsequent meeting be not greater by one-fifth than the number present when such resolution was made or such Act was done, but if the number of members or vestrymen present at such subsequent meeting be greater by one-fifth than the number present at such former meeting, then such revocation or alteration may be determined upon by a mere majority.

(*z*) **Sections 55—58 and 60.** The omitted words are repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(*a*) **Resignation of vestryman.** A vestryman may now at any time, by writing signed by him and delivered to the clerk of the vestry, resign his office, on payment of the fine provided for non-acceptance thereof (*Loc. Govt. Act*, 1894, sec. 48 (4), *post*, p. 539); and the Vestrymen and Auditors (London) Electns. Order, 1897, sched. 5, *post*, p. 583.

(*b*) **Re-election of vestryman.** See also the Vestrymen and Auditors (London) Election Order, 1897, sched. 5, *post*, p. 583.

(*c*) **Revoked or altered.** Where a vestry decided to repair a street under sec. 106, *post*, a resolution passed at a subsequent meeting to have the street paved under sec. 105, *post*, was held valid, although the first resolution had not been revoked. *Vestry of St. George the Martyr* v. *Pethebridge*, 31 J. P. 279. The alteration of the name of a street from a name decided upon at a previous meeting of the authority, is an alteration within the meaning of this section. *Sooby* v. *Kensington Vestry*, 35 J. P. 343. Under a byelaw made under the Pub. Hlth. Act, 1848, it was held that a resolution to make one general rate was an alteration of a resolution passed at a previous meeting to make separate rates; *Mayer* v. *Burslem*, 39 J. P. 437. *Semble*, that a resolution dismissing an officer is not a resolution rescinding the resolution by which he was appointed. *Ex parte Richards*, 3 Q. B. D. 368; 47 L. J. Q. B. 498; S. C. nom. *Reg.* v. *Jones*, 42 J. P. 614.

(*d*) **Meeting specially convened.** See sec. 40, *post*, as to convening special meetings of district boards; and the Met. Man. (Amend.) Act, 1856, sec. 9, *post*, as to convening meetings of vestries.

18 & 19 Vict. c. 120.

Committees may be appointed.

58. It shall be lawful for (*e*) . . . for the board of works for any district, and any such vestry respectively, to appoint a committee or committees (*f*) for any purposes which, in the discretion of the board or vestry, would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee: provided always, that the acts of every such committee shall be submitted to the general body of the board or vestry appointing such committee for their approval.

Powers of committees.

59. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless three members of the committee are present.

Minutes of proceedings of district boards, and of vestries to be entered.

60. Entries of all proceedings of (*e*) . . . every such district board, and of any such vestry, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose (*g*), under the direction of the board or vestry, and shall be signed by the members present, or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board or vestry having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board or vestry, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and every such board and vestry shall provide and keep books in which shall be entered true and regular accounts of all sums of money received or paid by them or under their authority, and of all liabilities incurred by them, and of the several purposes for which such sums of money are received and paid and such liabilities incurred, and copies of all contracts entered into by any such board or vestry.

All books to be open to inspection.

61. All such books shall at all reasonable times be open to the examination of every member of the board and vestry respectively to which such books belong, and of every owner of property, churchwarden, overseer, and ratepayer within the Metropolis, as regards books of the said *Metropolitan Board* (*k*), and of every owner of property, churchwarden, overseer, and ratepayer within any district or parish, as regards books belonging to the district board or vestry thereof (as the case may be), and of every creditor on the rates raised under this Act by any such board or

(*e*) **Sections 55—58 and 60.** See note (*z*) on page 129.

(*f*) **Committees.** It was held that the members of a committee appointed by a drainage board under the Land Drainage Act, 1861, could not delegate any of their powers to one of their number, but must act in concert. *Cook* v. *Ward*, 2 C. P. D. 255; 46 L. J. C. P. 554. The body appointing a committee does not thereby deprive itself of the powers delegated to the committee, and may exercise such powers at any time, without previously revoking the authority of the committee. *Huth* v. *Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120. See also *Barnsley Loc. Bd.* v. *Sedgwick*, L. R. 2 Q. B. 185; 36 L. J. M. C. 65; and *Eaton* v. *Basker*, 7 Q. B. D. 529; 50 L. J. Q. B. 444.

(*g*) **Minute book.** The minute book of a local board was ordered, in an action in the Chancery Division, to be deposited in the record and writ clerk's office for inspection, notwithstanding that it was in constant use. *Att.-Genl.* v. *Whitwood Loc. Bd.*, 40 L. J. Ch. 592; 19 W. R. 1107. The attendance book signed by a member, and the minute book containing his name, are evidence of such member having acted as a member of the vestry. *Hunnings* v. *Williamson*, 11 Q. B. D. 533; 52 L. J. Q. B. 416.

vestry respectively, without fee or reward, and they respectively may take copies of or extracts from such books or any part thereof, without paying for the same; and in case the members of the board or vestry, or any of them, or any of the officers or servants of the board or vestry having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any such owner of property, churchwarden, overseer, ratepayer, or creditor to examine the same, or take any copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before two justices, forfeit any sum not exceeding ten pounds. 18 & 19 Vict. c. 120.

Powers to district boards and vestries to appoint officers.

62. . . . (*h*) (subject to the provisions herein contained) the board of works for every district under this Act, and the vestry of every parish mentioned in schedule (A.) to this Act, shall respectively appoint or employ, or continue for the purposes of this Act, and may remove at pleasure, such clerks, treasurers, and surveyors, and such other officers (*i*) and servants as may be necessary, and may allow to such clerks, treasurers, surveyors, officers, and servants respectively such salaries and wages as the board or vestry may think fit.

Clerk and treasurer not to be the same person.

63. No person holding the office of treasurer under (*h*) . . . any district board or any such vestry, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of treasurer; and every person offending in any of the cases specified in this provision shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law.

Penalty on officers, &c. being interested in contracts, or exacting fees.

64. No officer or servant of the *Metropolitan Board* (*k*), or of any district board or any such vestry, shall be in anywise concerned or interested in any contract or work (*l*) made with or executed for such

(*h*) **Sections 62 and 63.** The omitted words are repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(*i*) **Other officers.** As to the appointment of medical officers of health and sanitary inspectors, see the Pub. Hlth. (London) Act, 1891, secs. 106—199, *post*; and the Sanitary Officers (London) Order, 1891, *post*.

(*k*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. And see secs. 118 (14), 119, and 120 of that Act, *ante*, as to the transfer of officers from the Met. Bd. Wks. to the County Council.

(*l*) **Interest in contract.** Where the surveyor was the patentee of certain bricks supplied to a local board, and received a commission on their sale, it was held not to be an illegal contract within sec. 38 of the Pub. Hlth. Act, 1848. *Wednesbury Loc. Bd.* v. *Stevenson*, 27 J. P. 741. A clerk to a local board, who let rooms to the board, was held liable to a penalty under sec. 193 of the Pub. Hlth. Act, 1875. *Burgess* v. *Clark*, 14 Q. B. D. 735; 49 J. P. 388. So also was the surveyor of a town council, who received a percentage from a contractor on work done by the contractor for the council. *Whiteley* v. *Barley*, 21 Q. B. D. 154; 57 L. J. Q. B. 643; and subsequent orders of the council to pay the surveyor's commission and his costs of defending the action, were removed to the Queen's Bench Division and quashed. *Reg.* v. *Ramsgate (Mayor, &c., of)*, 23 Q. B. D. 66; 58 L. J. Q. B. 352. And the members of the council who had joined in making the orders were held liable to pay the costs of the certiorari. *Reg.* v. *Vaile*, or *Whiteley*, 23 Q. B. D. 483; 58 L. J. M. C. 164. It has been held that the effect of similar provisions contained in sec. 193 of the Pub. Hlth. Act, 1875, is to render void every contract of a local board with its officers, and that no action can be maintained upon such a contract. *Melliss* v. *Shirley Local Board*, 16 Q. B. D. 446; 55 L. J. Q. B.

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board or vestry; and if any such officer or servant be so concerned or interested, or, under colour of his office or employment, exact, take, or accept any fee or reward (*m*) whatsoever, other than his proper salary, wages, and allowances (*n*), he shall be incapable of afterwards holding or continuing in any office or employment under such board or vestry, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action in any of the superior courts of law; provided that no person, being a shareholder of any joint stock company, shall be prevented from being employed as an officer or servant by reason of any contract between such company and such board or vestry, or of any work executed by such company.

Officers, &c. intrusted with money to give security for duly accounting for the same.

65. (*o*) Before any officer or servant as aforesaid enters upon any office or employment under this Act, by reason whereof he will or may be intrusted with the custody or control of money, the board or vestry shall require and take from him such security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof, as they may think sufficient; and every such officer and servant, as well during his continuance in office or employment as upon his resignation, dismissal, or ceasing to hold his office or employment, shall respectively, when and in such manner as shall be required by the board or vestry, make out and deliver a true and perfect account, in writing signed by him, of all moneys received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such moneys have been disposed of, and shall together with such account deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer or such person as the board or vestry may appoint all moneys owing by him; and if any such officer or servant fail to render such account, or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such moneys as aforesaid, or if, for the space of five days after being thereunto required, he fail to deliver up to the board or vestry, or to such person as they may appoint, all books, papers, writings, property, effects, matters, and things in his possession or power belonging to the board or vestry, then and in every such case a justice shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices, at a time and place to be specified in the summons (*p*); and upon the appearance of the

If officer fail to render account, &c. Justices may commit offender to prison.

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143. But *semble* that if, after the making of a contract, an officer of the local authority become interested in it, the contract would not be void, though the officer would forfeit any benefit under it. *Ib.* See further as to what constitutes a contract or interest in a contract, note to *Mun. Corp. Act*, 1882, sec. 12 (1) (c), *ante*.

(*m*) **Fee or reward.** Where an officer, who has been bribed so to do, induces his employer to enter into a contract with a person who has paid the bribe, the bribe may be recovered from the agent, and in addition the employer may recover from the agent and the person who paid the bribe, jointly or severally, damages for any loss which he has sustained by entering into the contract. *Salford (Mayor, &c.)*, v. *Lever* (1891), 1 Q. B. 168; 60 L. J. Q. B. 39.

(*n*) **Allowances.** Gratuities to officers out of rates are illegal. *Ex parte Mellish*, 8 L. T. (N. S.) 47. But extra remuneration for the performance of additional duties is legal. *Reg.* v. *Prest*, 16 Q. B. 32; *Reg.* v. *Gloucester (Mayor, &c.)*, 33 L. T. (O. S.) 145; 23 J. P. 709; *Edwards* v. *Salmon*, 23 Q. B. D. 53; 58 L. J. Q. B. 571.

(*o*) **Accountability of officers.** As to the accountability of officers appointed by the County Council, see the Mun. Corp. Act, 1882, secs. 20 and 21, *ante*.

(*p*) **Summary proceedings.** Where the claim is for a sum of money recoverable summarily, proceedings should be taken in the manner provided by sec. 6 of the

party charged, or upon proof that the summons was personally served upon him or left at his last known place of abode in *England*, and if it appear to the last-mentioned justices that he has failed to render any such account, or to produce and deliver up any such vouchers or receipts, or any such books, papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, it shall be lawful for them, by warrant under their hands and seals, to commit the offender to gaol (*q*), there to remain, without bail, until he shall have rendered such account, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made; and if it appears that the party charged has failed to pay over any such moneys as aforesaid, and that he still fails or refuses so to do, it shall be lawful for the last-mentioned justices, by a like warrant, to cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress to commit him to gaol, there to remain, without bail, for a period not exceeding three months, unless such moneys be sooner paid: Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, it shall be lawful for such justice, without previous summons, by warrant under his hand and seal to cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: Provided also, that no such proceeding shall be construed to relieve or discharge any surety of the offender from any liability whatsoever (*r*).

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Power to levy by distress.

Summary Jurisdiction Act, 1879 (see note to sec. 227, *post*). Under similar provisions of sec. 60 of the Mun. Corp. Act, 1835 (5 & 6 Wm. 4, c. 76), it was held that that section did not exclude an action for damages. *Lichfield (Mayor, &c.)* v. *Simpson*, 8 Q. B. 65. Under sec. 69 of the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), it was held that the refusal to produce and deliver up was a continuing offence, and that proceedings to compel production and delivery were not limited to six months from the first refusal under sec. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43). *Mayer* v. *Harding*, 17 L. T. N. S. 140; 32 J. P. 421.

(*q*) **Commit to gaol.** Under similar provisions of the Poor Law Amend. Act, 1743 (17 Geo. 2, c. 38), sec. 2, it is discretionary in the magistrates to commit an out-going churchwarden or overseer who refuses to account. *Rex* v. *Justices of Norfolk*, 4 B. & Ad. 238.

(*r*) **Liability of surety.** Any material alteration in the office or duties guaranteed, without the consent of the surety, discharges the security. *Oswald* v. *Berwick (Mayor, &c.)*, 5 H. L. C. 856, and cases there cited; *Malling Union* v. *Graham*, L. R. 5 C. P. 201; 39 L. J. C. P. 74. But the mere addition of duties not included in the guarantee which do not affect the duties guaranteed does not avoid the security. *Skillett* v. *Fletcher*, L. R. 1 C. P. 217; 35 L. J. C. P. 154. Nor does the transfer of an officer from one district of a union to another, where the transfer does not amount to an appointment to a fresh office, or a material alteration of his duties. *Portsea Union* v. *Whillier*, 2 E. & E. 755. The non-disclosure of material facts affecting the honesty of the servant avoids the security. *Lee* v. *Jones*, 17 C. B. N. S. 482; 34 L. J. C. P. 131. The employment of a person after discovery of his dishonesty, without the consent of the guarantor, relieves the guarantor of subsequent liability. *Phillips* v. *Foxall*, L. R. 7 Q. B. 666; 41 L. J. Q. B. 293. Positive acts done by the employer to the prejudice of the surety, or such degree of negligence as to imply connivance and amount to fraud, will discharge the security; but mere passive inactivity, such as

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Metropolitan and district boards and vestries to provide proper offices, and to cause daily attendance to be given.

66. (*s*) . . . every such district board and vestry respectively shall provide and maintain such offices within their respective district or parish as may be necessary for the purposes of this Act, and shall take care that their clerk, or some person duly authorised by them in that behalf, attends at their office daily (Sundays, Christmas Day, and Good Friday, and days appointed for any general fast or thanksgiving, alone excepted), for the purpose of receiving notices and transacting the ordinary business of the board or vestry under this Act.

Duties and Powers of Vestries and District Boards (*t*).

"Vestry" in following provisions to mean vestry of a parish in schedule (A.)

67. Where in the provisions hereinafter contained any expression is used referring to the vestry of a parish, such expression shall be construed as referring only to the vestry of a parish mentioned in schedule (A.) to this Act, unless such construction be repugnant to the context.

Sewers (except main sewers) vested in vestries and district boards.

68. All sewers vested in the Metropolitan Commissioners of Sewers (*u*) which are situate in any parish mentioned in schedule (A.) to this Act (except such sewers as are mentioned in schedule (D.) to this Act) (*x*), with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto appertaining, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers (*y*), works, and things, shall become vested in the vestry of such parish; and all sewers vested in the said Metropolitan Commissioners which are situate within any district mentioned in schedule (B.) to this Act, except as before excepted, with all such works and things as aforesaid appertaining thereto, and all rights of way and passage used and enjoyed by such commissioners over or to such sewers, works, and things, and all other rights concerning or incident to such sewers, works, and things, shall become vested in the board of works for such district; and all sewers made and to be made within any such parish or district, except sewers and works vested or to be vested in the Metropolitan Board of Works, as hereinafter mentioned, shall be vested in such vestry and board respectively (*z*).

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neglect to call the servant to account in reasonable time, and to enforce payment against him, will not do so. *Durham* (*Mayor, &c.*) v. *Fowler*, 22 Q. B. D. 394; 58 L. J. Q. B. 246; and see cases there cited.

(*s*) **Section 66.** The omitted words are repealed by 55 & 56 Vict. c. 19 (Stat. Law. Rev.).

(*t*) **Powers of vestries, &c.** The powers and duties of the vestries and district boards have been considerably amended and extended by numerous Acts, which are set out in this work, *post*. Some parishes have also local Acts affecting the powers and duties of their respective vestries.

(*u*) **Metropolitan Commissioners of Sewers.** See note to sec. 145, *post*.

(*x*) **Sewers in schedule (D.).** Those are the main sewers, and are vested in the County Council. See sec. 135, *post*. The County Council may declare any sewers to be main sewers which appear to them ought to be considered main sewers. Sec. 137, *post*.

(*y*) **Rights incident to sewers.** See *Met. Bd. Wks.* v. *Metropolitan Ry. Co.*; and *Dudley Corporation, In re*; *post*, p. 161.

(*z*) **Vesting of sewers.** See the definition of sewer in sec. 250, and note thereto, *post*. In the City of London all sewers, other than main sewers, are vested in the Commissioners of Sewers of the City, under the City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii). In Woolwich they are vested in the Woolwich Local Board, as to the constitution of which see note to sec. 238, *post*. In the remainder of the Metropolis they are vested in the respective vestries and district boards in pursuance of the above section.

A sewer laid under a street by a private person becomes vested in the vestry or district and repairable by them, even though the requisite consent of the local

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Vestries and district boards to repair, &c., all sewers vested in them, and from time to time to construct new ones, &c.

69. The vestry of every parish mentioned in schedule (A.) to this Act, and the board of works for every district mentioned in schedule (B.) to this Act, shall (subject to the powers by this Act vested in the *Metropolitan Board of Works* (*a*) from time to time repair and maintain the sewers under this Act vested in them, or such of them as shall not be discontinued, closed up, or destroyed under the powers herein contained, and shall cause to be made, repaired, and maintained such sewers and works, or such diversions or alterations of sewers and works, as may be necessary for effectually draining their parish or district (*b*), and shall cause all banks,

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authority to its construction was not obtained. *Reg.* v. *St. Matthew, Bethnal Green* (1896), 2 Q. B. 319; 65 L. J. M. C. 215. So does a sewer laid in private ground. *St. Martin-in-the-Fields* v. *Bird*, *post*, p. 213; *Kershaw* v. *Taylor*, *post*, p. 213; *Ferrand* v. *Hallas Land and Building Co.* (1893), 2 Q. B. 135; 62 L. J. Q. B. 479. And also a drain which becomes a sewer in consequence of the unauthorised connection with it of the drain of another building not in the same curtilage. *Bateman* v. *Poplar Dist. Bd.* (*No.* 2), *post*, p. 212; and *Holland* v. *Lazarus*, *post*, p. 212.

The usual clause vesting sewers in a local authority does not confer on the local authority merely an easement or right of sewerage or drainage, but vests in such authority the absolute property in the sewer, which means not only the material forming the sewer, but the whole space occupied by it. *Taylor* v. *Oldham Corporation*, 4 Ch. D. 395, *per* Jessel, M. R., at p. 411; 46 L. J. Ch. 105. But the vesting is not an absolute right of ownership, but a modified and limited right of ownership, and it does not give the local authority the right to stop up the sewer so as to cause a nuisance, *Att.-Gen.* v. *Dorking Union*, 20 Ch. D. 595, *per* Jessel, M. R., at p. 604; 51 L. J. Ch. 590. And where the sewer becomes a nuisance the local authority cannot require the inhabitants to cut off their communications with it, in order to evade their own obligation to abate the nuisance and provide a suitable sewer. *Fordom* v. *Parsons* (1894), 2 Q. B. 780; 64 L. J. M. C. 22. See also *Ogilvie* v. *Blything Rural Sanitary Authority*, 67 L. T. (N. S.) 18. A vestry cannot stop up a communication between a drain and a sewer which they have once authorised or directed, without providing some other equally effectual sewer or drain in accordance with sec. 69, *post*. *Att.-Gen.* v. *Clerkenwell Vestry* (1891), 3 Ch. 527; 60 L. J. Ch. 788.

For provisions for the protection of sewers, see secs. 83, 204 and 205, *post*; the Met. Man. Amend. Act, 1862, secs. 68 and 69, *post*; and the London Coun. Counc. (Genl. Powers) Act, 1894, secs. 8—17, and notes thereto, *post*, p. 526. Any person making any sewer or branching any sewer or drain into any sewer vested in the county council, or in any vestry or district board, without their approval in writing, is liable to a penalty not exceeding fifty pounds. Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), secs. 4 and 5, *post*.

(*a*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*, p. 28. The powers of the vestries and district boards to construct, maintain, and repair sewers, and to make connections with the main sewers, are subject to certain regulations and restrictions, and to the control and byelaws of the county council, as provided by sec. 138, *post*. Secs. 45—51, and sec. 83 of the *Met. Man. Amend. Act*, 1862, *post*, and the Met. Man. Amend. Act, 1890, sec. 4, *post*. Any vestry or district board may transfer their powers as to sewerage to the county council (sec. 89, *post*); but not without the consent in writing of the council. Met. Man. Amend. Act, 1862, sec. 28, *post*.

(*b*) **Sewers to be made and maintained.** The local authority has a discretion as to the order, time, and mode in which the works are to be done. *Reg.* v. *Chelsea Vestry*, 31 L. J. Q. B. 50; 26 J. P. 85. See also *Reg.* v. *Tottenham Loc. Bd.*, 9 T. L. R. 414. It is not a ground for an action for a *mandamus*, or a mandatory injunction, or damages, that a local authority is not properly exercising its powers or performing its duties with regard to the provision of a sufficient or suitable system of drainage, even though a nuisance may exist. *Glossop* v. *Heston and Isleworth Loc. Bd.*, 12 Ch. D. 102; 49 L. J. Ch. 89; *Att.-Genl.* v. *Clerkenwell Vestry* (1891), 3 Ch. 527; 60 L. J. Ch. 788; *Robinson* v. *Workington* (*Mayor, &c., of*), *post*, p. 164; *Peebles* v. *Oswaldtwistle Urb. Dist. Counc.* (1897), 1 Q. B. 625; 66 L. J. Q. B. 392; overruling (1897) 1 Q. B. 384; 66 L. J. Q. B. 107. See also *Champ*, *Ex parte*, 20 J. P. 756; and *Parsons*, *Ex parte*, 22 J. P. 68.

A prerogative writ of *mandamus* to compel a vestry to repair and maintain a combined drain which was a sewer within the meaning of sec. 250, *post*, was refused, the proper remedy being an action for a declaration and a *mandamus*. *Reg.* v. *St. Giles, Camberwell*, 66 L. J. Q. B. 337; 61 J. P. 217. For cases in which a *mandamus* has been granted to compel the local authority to repair and maintain combined drains,

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wharves, docks, or defences abutting on or adjoining any river, stream, canal, pond, or watercourse in such parish or district, to be raised, strengthened, or altered or repaired, where it may be necessary so to do, for effectually draining, or protecting from floods or inundation (*c*) such parish or district; and it shall be lawful for any such vestry or district board to carry any such sewers or works through, across, or under any *turnpike road* (*d*), or any street (*e*) or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriageway of any street, and into, through, or under (*f*) any lands whatsoever (*g*), making compensation for any damage done thereby as hereinafter provided (*h*); and it shall be lawful for any such vestry or district board from time to time to enlarge, contract, raise, lower, arch over, or otherwise improve or alter all or any of the sewers, watercourses, and works which shall be from time to time vested in them or subject to their order and control, and to discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided always, that no new sewer shall be made without the previous approval of the *Metropolitan Board of Works* (*i*): provided also, that the discontinuance, closing up, destruction, or alteration of any sewer as aforesaid shall be so done as not to create a nuisance (*k*); and if by reason thereof any person shall be deprived of the lawful use of any covered sewer, it shall be the duty of the vestry or district board to provide some other sewer or a drain as effectual for his use as the sewer of which he is so deprived (*l*): provided also, that where the vestry or

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being sewers, see *Reg.* v. *St. Matthew, Bethnal Green, ante*, p. 135; *Appleyard* v. *St. Mary, Lambeth, post*, p. 213; and *Reg.* v. *Hastings (Mayor, &c., of)* (1897), 1 Q. B. 46; 66 L. J. Q. B. 80.

As to nuisances arising from the discharge of sewage, or the non-repair or overflow of sewers, see note (*h*) to sec. 135, *post*. And for further powers of vestries and district boards with respect to the construction of sewers, see the Met. Man. Amend. Act, 1862, sec. 44, and secs. 52—58, *post*.

(*c*) **Protection from floods.** By the Metrop. Mant. (Thames River Prevention of Floods) Amend. Act, 1879, sec. 43, *post*, vol. ii. tit. "*Thames*," it is provided that this section and sec. 70, "so far as they relate to the execution and maintenance of flood works and banks as defined by" that "Act by vestries and district boards, shall cease to be in force or to have effect." In a case decided in 1877 it was held that the present section imposed upon the vestries and district boards the duty of repairing that portion of the river wall of the Thames comprised in their respective parishes or districts. *Plumstead Bd. Wks.* v. *Kent Commissioners of Sewers*, 41 J. P. 388.

(*d*) **Turnpike roads** no longer exist in the Metropolis. See note to sec. 11 (1) of the Loc. Govt. Act, 1888, *ante*.

(*e*) **Street.** See sec. 250, and notes thereto, *post*, for definition of "street." Vestries and district boards may, with the previous sanction of the County Council, stop up any street during the execution of sewerage works. *Met. Man. Amend. Act*, 1862, sec. 84, *post*.

(*f*) **Into, through, or under.** For meaning of these words, see *Roderick* v. *Aston Loc. Bd.*, *post*, p. 162.

(*g*) **Any lands whatsoever.** See note (*e*) to sec. 135, *post*.

(*h*) **Compensation.** See note (*f*) to sec. 135, *post*.

(*i*) **Approval of Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. The previous approval of the County Council is necessary for the construction of any new sewer, either within or beyond the limits of the Metropolis, by any vestry, district board, or other body having control over sewers within the Metropolis. Met. Man. Amend. Act, 1862, sec. 58, *post*, and the consent of the County Council must be obtained before any sewer or drain is connected with any sewer vested in the Council. Met. Man. Amend. Act, 1862, secs. 45—51, and sec. 83, *post, et seq.*; and Met. Man. Amend. Act, 1890, sec. 4, *post*.

(*k*) **Nuisance.** See note (*h*) to sec. 135, *post*.

(*l*) **Provide other sewer or drain.** Where, in consequence of the provision of a new sewer for an old one into which a house drains, it becomes necessary to make a new

district board alter any sewer, or provide a new sewer in substitution for a sewer discontinued, closed up, or destroyed, they may contract or otherwise alter the private drains communicating with the sewer so altered, or with the sewer so discontinued, closed up, or destroyed, or may close up or destroy such private drains, and provide new drains in lieu thereof, as the circumstances of the sewage may appear to them to require, but so that in every case the altered or substituted drain shall be as effectual for the use of the person entitled thereto as the drain previously used. 18 & 19 Vict. c. 120.

Power to vestries and district boards to do works of improvement in sewers, &c., the expense of which to be divided between the party liable and the parish or district.

70. Wherever any party is, by prescription, by reason of tenure, or otherwise, liable by law to maintain or do any repairs to sewers, banks, watercourses, or works in any such parish or district which the vestry or district board judge it necessary to alter or improve, it shall be lawful for them to make such alterations or improvements therein as they think proper, and to divide the expense of such alterations or improvements between the party liable to such maintenance or repairs and the parish, district, or persons who would have been wholly liable to the expense of such alterations or improvements if no party had been liable as aforesaid, so as to throw on the party liable to such maintenance or repairs such part of the expense of alterations or improvements as may be equal to what would be incurred for such maintenance or repairs, and to throw on the parish, district, or persons aforesaid the residue of such expense, and to settle and adjust such proportions either by some general regulation or by order in each particular case, as they may think proper: Provided always, that nothing in this Act contained shall exempt from liability to do any works, or to pay the whole cost thereof, any person who, by prescription, by reason of tenure, or otherwise by law, is so liable.

Gullyholes, &c., to be trapped.

71. Every district board and vestry shall, by providing proper traps or other coverings, or by ventilation, or by such other ways and means as shall be practicable for that purpose, prevent the effluvia of sewers from exhaling through gullyholes, gratings, or other openings of sewers in any of the streets or other places within their district or parish (*m*).

Vestries and district boards to cause sewers to be cleansed, &c.

72. Every vestry and district board shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance (*n*) or injurious to health, and to be properly cleared, cleansed, and emptied (*o*), and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works (*p*) as may be necessary (*q*).

Vestry or district board in certain cases may compel owners, &c., of houses to construct drains into the common sewer.

73. If any house or building (*r*), whether built before or after the

drain, connecting the house with the new sewer, the vestry cannot, under sec. 73, *post*, recover from the owner the expense of making the new drain. *St. Martin-in-the-Fields* v. *Ward* (1897), 1 Q. B. 40; 66 L. J. Q. B. 97. See also *Fulham Dist. Bd.* v. *Goodwin*, *post*, p. 247.

(*m*) **Trapping gullyholes.** Notice must be given to the county council before trapping or closing any gully or ventilating shaft immediately connected with a main sewer. Met. Man. Amend. Act, 1862, sec. 27.

(*n*) **Nuisance.** See note (*h*) to sec. 135, *post*.

(*o*) **Cleared, cleansed, and emptied.** See note (*i*) to sec. 135, *post*, and *Hammond* v. *St. Pancras Vestry*, *post*, p. 164.

(*p*) **Reservoirs, sluices, &c.** See *Sutton* v. *Norwich* (*Mayor, &c., of*), *post*, p. 165.

(*q*) **As may be necessary.** See *Stroud* v. *Wandsworth Dist. Bd.*, *post*, p. 161.

(*r*) **House. Building.** This section applies only to existing houses and buildings, *Bateman* v. *Poplar Dist. Bd.*, *post*, p. 139. The word "house" includes every building which is capable of being used as a human habitation. If a building which is physically capable of being so used is prevented, either by common law or statute, from being ever

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commencement of this Act, situate within any such parish or district, be found not to be drained by a sufficient drain (*s*), communicating with some sewer, and emptying itself into the same, to the satisfaction of the vestry or board of such parish or district, and if a sewer of sufficient size be within one hundred feet (*t*) of any part of such house or building, on a lower level than such house or building, it shall be lawful for the vestry or board, at their discretion (*u*), by notice in writing (*x*), to require the owner (*y*) of such house or building forthwith, or within such reasonable time as may be appointed by the vestry or board, to construct and make from such house or building into any such sewer a covered drain, and such branches thereto, of such materials, of such size, at such level, and with such fall as shall be adequate (*z*) for the drainage of such house or building, and its several floors or stories, and also of its areas, waterclosets, privies, and offices, (if any,) and for conveying the soil, drainage, and wash therefrom into the said sewer, and to provide fit and proper paved or impermeable sloped surfaces for conveying surface water thereto, and fit and proper sinks, and fit and proper syphoned or otherwise trapped inlets and outlets for hindering stench therefrom, and fit and proper water supply (*a*) and water supplying pipes, cisterns, and apparatus for scouring

put to such a use, it is not a house within the meaning of this Act. Therefore, a consecrated church is exempted, because by the common law it becomes for ever incapable of use as a habitation for man. But a chapel, registered as a place of worship, but which has not been consecrated or dedicated in perpetuity, is a house within the meaning of the Act. *Wright* v. *Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17, and cases there cited. *Semble* that a house built with foundations placed on the surface, without any digging out, is a building within the section. *Poplar Dist. Bd.* v. *Knight*. E. B. & E. 408; 28 L. J. M. C. 37. See further as to what is a building, notes to secs. 5 (6) and 22 of the London Building Act, 1894. *post*.

(*s*) **Sufficient drain.** This applies to the drain itself, and not to the question of the sufficiency of the sewer with which it is connected. *St. Martin-in-the-Fields* v. *Ward*, *ante*, p. 137.

(*t*) **Within one hundred feet.** Under the City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii.), sec. 61, it was held that the "nearest common sewer" means the nearest which the house owner can get at by exercising his ordinary rights, and not necessarily that literally nearest. Where, therefore, an insufficient drain ran under a neighbour's house to the sewer that was literally nearest, the Commissioners were entitled to require the owner to construct a drain communicating with a sewer which, though farther off, had no house or private property intervening. *Bathard* v. *City of London Commissioners of Sewers*, 54 J. P. 135.

See sec. 75, *post*, as to the drainage of new houses where there is no sewer within one hundred feet; and sec. 66 of the Met. Man. Amend. Act, 1862. *post*, p. 252, as to the drainage of existing houses where there is no sewer within two hundred feet.

(*u*) **At their discretion.** The vestry itself, or a committee duly appointed in that behalf, must exercise its discretion in each particular case. *St. Leonards, Shoreditch* v. *Holmes*, 50 J. P. 132. A sanitary inspector, without any authority from the vestry, or a duly appointed committee, except such as attached to him by virtue of his office, served a notice on the owner of a house, requiring him to do certain work. On the owner making default, a second notice was served on him by the sanitary inspector on the authority of the sanitary sub-committee, and this action was subsequently approved by the vestry. *Held*, that the notices were invalid, and that the statute had not been complied with. *Ib.*

(*x*) **Notice in writing.** Writing includes printing, lithography, photography, and other modes of representing or producing words in a visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

A notice may be good as to part, though *ultra vires* and bad as to the remainder. *Hall* v. *Potter*, 39 L. J. M. C. 1; 21 L. T. (N. S.) 454.

(*y*) **Owner** is defined by sec. 250, *post*.

(*z*) **Adequate materials.** Compare the wording of this section with that of sec. 76, *post*, and see note thereto. Under that section drains must be made of such material, &c., "as the vestry or board shall order," whereas under the present section they are to be made of such material, &c., "as shall be adequate."

(*a*) **Water-supply.** For provisions where there is not a proper and sufficient water supply, see Pub. Hlth. (London) Act, 1891, sec. 48, *post*.

the same, and for causing the same to convey away the soil, and fit and proper sand traps, expanding inlets, and other apparatus for hindering the entry of improper substances therein, and all other such fit and proper works and arrangements as may appear to the vestry or board, or to their officers, requisite to secure the safe and proper working of the said drain, and to prevent the same from obstructing or otherwise injuring or impeding the action of the sewer to which it leads; and it shall be lawful for the said vestry or board to cause the said works to be inspected while in progress, and from time to time during their execution to order such reasonable alterations therein, additions thereto, and abandonment of part or parts thereof, as may to the vestry or board or their officers appear, on the fuller knowledge afforded by the opening of the ground, requisite to secure the complete and perfect working of such works; and if the owner of such house or building neglect or refuse, during twenty-eight days after the said notice has been delivered to such owner, or left at such house or building, to begin to construct such drain and other works aforesaid, or any of them, or thereafter fail to carry them on and complete them with all reasonable despatch, it shall be lawful for the vestry or board to cause the same to be constructed and made, and to recover the expenses, to be incurred thereby from such owner in the manner herein-after provided (*b*).

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Penalty on owner, &c., for neglect.

74. If it appear to the vestry or board of any parish or district that a group or block of contiguous houses, or of adjacent detached or semi-detached houses, may be drained and improved more economically or advantageously in combination than separately, and a sewer of sufficient size already exist or be about to be constructed within one hundred feet (*c*) of any part of such group or block of houses, whether contiguous, detached, or semi-detached, it shall be lawful for such board or vestry to order that such group or block of houses (*d*) be drained and improved, as herein before provided, by a combined operation (*e*).

Provision for combined drainage of blocks of houses.

75. It shall not be lawful to erect any house or other building (*f*) in any parish mentioned in schedule (A.) to this Act, or in any district mentioned in schedule (B.) to this Act, or to rebuild any house or building within any such parish or district which has been pulled down to or below the floor commonly called the ground floor, or to occupy any house or building so

No house to be built without drains constructed to the satisfaction of the vestry or district board.

(*b*) **Recover expenses.** The vestry or board may either sue for penalties or execute the work themselves, and recover the expenses from the owner or occupier. Met. Man. Amend. Act, 1862, secs. 64 and 96, *post*. As to the manner of recovering such penalties and expenses, see *ib.*, secs. 64, 102, 104, and 107, and secs. 225—227 of the present Act, *post*.

Where an owner failed to comply with the requirements of a sanitary authority under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), and by agreement the sanitary authority themselves executed the work, they were held liable for damage caused to the owner's premises in consequence of their negligence in doing it. *Hall* v. *Batley* (*Mayor, &c., of*), 47 L. J. Q. B. 148; 42 J. P. 151.

(*c*) **Within one hundred feet.** See note (*t*) on page 138.

(*d*) **Block of houses.** This section is supplemental to sec. 73, and applies only to existing houses. The case of houses about to be built is provided for by sec. 76, *post*. *Bateman* v. *Poplar Dist. Bd.* (No. 1), 33 Ch. D. 360; 56 L. J. Ch. 149.

(*e*) **Combined drainage.** Combined drains for the drainage of a group or block of houses, not within the same curtilage, which were not made under the order of any vestry or district board, or pursuant to the order, or with the sanction of the Metropolitan Commissioners of Sewers, are sewers maintainable by the vestry or board. See definition of drain in sec. 250, *post*, and note thereto.

(*f*) **House. Building.** See note (*r*) to sec. 73, *ante*.

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newly built or rebuilt, unless a drain (*g*) and such branches thereto and other connected works and apparatus and water supply as hereinbefore mentioned be constructed and provided to the satisfaction of the surveyor of the vestry of such parish or board of works for such district, of such materials, of such size, at such level, and with such fall as they may direct, so that the same shall be available for the drainage of the lowest floor of such house or building, and of its several floors or stories, and also of its areas, waterclosets, privies, and offices (if any), which drain shall lead from such house or building, or the intended site of such house or building, to such sewer, already made or intended to be constructed near thereto, as the vestry or board shall direct and appoint, or if there be no such sewer existing or intended to be constructed within one hundred feet (*h*) of any part of the intended site of such house or building, then to such covered cesspool or other place, not being under any dwelling house, as the vestry or board shall direct; and whenever any house or building is rebuilt as aforesaid, the level of the lowest floor of such house or building shall be raised sufficiently to allow of the construction of such a drain and such branches thereto and other works and apparatus as are hereinbefore required, and for that purpose the levels shall be taken and determined under the direction of the vestry or district board.

Notice of buildings to be given to the vestry or district board before commencing the same.

76. Before beginning to lay or dig out the foundation (*i*) of any new house or building (*k*) within any such parish or district, or to rebuild any house or building therein, and also before making any drain for the purpose of draining directly or indirectly into any sewer under the jurisdiction of the vestry or board of or for any such parish or district, seven days' notice in writing shall be given to the vestry or board (*l*) by the person intending to build or rebuild such house or building or to make such drain; and every such foundation shall be laid at such level (*m*) as will permit the drainage of such house or building in compliance with this Act, and as the vestry or board shall order, and every such drain shall be made in such

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(*g*) **Drain** is defined by sec. 250, *post*. As to the obligation to provide waterclosets, ashpits, and other sanitary conveniences on erecting or rebuilding any house, see Pub. Hlth. (London) Act, 1891, sec. 37 *et seq.*, *post*.

(*h*) **No sewer within 100 feet.** See *Bathard* v. *City of London Commissioners of Sewers*, *ante*, p. 138. For temporary provision for drainage of property where no proper sewer exists within two hundred feet, see Met. Man. Amend. Act, 1862, sec. 66, *post*. As to the construction of sewers in new streets and in streets in which there is no sewer or only an open sewer, see *ib.*, secs. 52—57.

(*i*) **Foundation.** As to bylaws of the County Council respecting the foundations and sites of buildings, see the London Building Act, 1894, sec. 164, *post*.

(*k*) **House. Building.** See note (*r*) on page 137.

(*l*) **Notice to vestry, &c.** As to the manner of serving the notice, see sec. 220, *post*. The Met. Man. Amend. Act, 1862, sec. 88, *post*, imposes penalties for omitting to give this notice.

"Every person who shall intend to build or take down any house building or wall (not being within the City of London) within ten feet of any public thoroughfare shall give notice of such intention to the vestry or district board of the parish or district in which such house building or wall is situate," under a penalty for omitting to do so of not exceeding five pounds, and a further penalty not exceeding forty shillings for every day on which such offence shall continue after conviction. London Council (Genl. Powers) Act, 1890, sec. 32, set out in note to sec. 121 of the present Act, *post*.

The London Building Act, 1894, sec. 145, *post*, requires two clear days' notice to be given to the district surveyor before commencing or resuming the construction of any building, and if the builder is changed, before a new builder enters upon the work.

(*m*) **Level of site.** The County Council is empowered to make bylaws regulating the plans and level of sites for new buildings by the London Building Act, 1894, sec. 164, *post*.

direction, manner, and form, and of such materials (*n*) and workmanship, and with such branches thereto and other connected works and apparatus and water supply as herein before mentioned, and as the vestry or board shall order, and the making of every such drain shall be under the survey and control of the vestry or board (*o*); and the vestry or district board shall make their order in relation to the matters aforesaid, and cause the same to be notified to the person from whom such notice was received within seven days after (*p*) the receipt of such notice, and in default of such notice, or if such house, building, or drain, or branches thereto or other connected works and apparatus and water supply, be begun, erected, made, or provided in any respect contrary to any order of the vestry or board made and notified as aforesaid, or the provisions of this Act, it shall be lawful for the vestry or board to cause such house or building to be demolished or altered (*q*), and to cause such drain or branches thereto and other connected works and apparatus and water supply to be relaid, amended, or re-made, or, in the event of omission, added, as the case may require, and to recover the expenses thereof from the owner thereof in the manner herein after provided.

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77. [*Power to branch drains into sewers. Rep. and replaced by Met. Man. (Amend.) Act*, 1862, *sec.* 61, *post.*]

78. Whenever it is necessary to open any part of the pavement (*r*) or any street or public place, for the purpose of making or branching any private drain into any of the sewers or drains vested in the *Metropolitan Board of Works* (*s*), or any vestry or district board under this Act, or authorised to be made by them under this Act, it shall be lawful for the vestry or board, in case they think fit so to do, to make so much and such part of such private drain, and also to construct so much and such part of the work necessary for branching the same into the public sewers as shall be under or in any street, and to recover the expenses incurred thereby from the owner of the house, building, or ground to which such private drain belongs, in the manner hereinafter provided (*t*).

Power to county council or vestry or district board to branch private drains into sewers, at the expense of the party to whom they belong.

79. It shall be lawful for any such vestry or board to contract and agree with the owners or occupiers of any houses, buildings, or ground that any drains required to be made, altered, or enlarged by such owners shall

Vestry or district board may agree to make house drains at the expense of owners or occupiers.

(*n*) **Materials.** This section gives the vestry the right to determine which of two materials shall be used, provided that they do not exercise a capricious discretion. *Austin* v. *St. Mary, Lambeth*, 27 L. J. Ch. 677; 22 J. P. 111.

(*o*) **Control of vestry, &c.** The general words of this section give the vestry or board power to order drainage by a combined operation in the case of houses about to be built. *Bateman* v. *Poplar Dist. Bd.* (*No.* 1). 33 Ch. D. 360; 56 L. J. Ch. 149.

(*p*) **Within seven days after.** For meaning of these words see note to sec. 211, *post.* The period here limited may be extended to fifteen days under certain conditions. See Met. Man. Amend. Act, 1862, sec. 63, *post.*

(*q*) **Cause to be demolished.** See note (*b*) *ante*, p. 139. A vestry or district board, before ordering the demolition of a house under this section, must give the owner an opportunity of showing cause why it should not be demolished. *Cooper* v. *Wandsworth Dist. Bd.*, 32 L. J. C. P. 185; 14 C. B. (N. S.) 180. See also *Hopkins* v. *Smethwick Loc. Bd.*, 24 Q. B. D. 712; 59 L. J. Q. B. 250.

(*r*) **Pavement.** A street of which the sides are kerbed and gravelled, but not flagged, is paved within the meaning of this section. *St. John's, Hampstead*, v. *Hoopel*, 15 Q. B. D. 652; 54 L. J. M. C. 147. For definition of the word "pave," see Met. Man. Amend. Act, 1862, sec. 112, *post.*

(*s*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

(*t*) **Recovery of expenses.** See secs. 225 and 226, *post.*

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be constructed, made, altered, and enlarged by the vestry or board (*u*); and the cost price of making, altering, or enlarging such drains, as certified by the surveyor of the vestry or board, shall be repaid by the owner or occupier so agreeing to the vestry or board, and in default of payment the same may be recovered in the manner herein-after provided (*x*).

Vestry or district board may order a contribution towards construction of sewers in certain cases.

80. Where any sewer in any of the parishes mentioned in either of the schedules (A.) and (B.) to this Act, into which any drain shall be made or branched, has been built since the third day of September one thousand eight hundred and thirteen, and before the commencement of this Act (*y*), at the expense of any person or body other than any commissioners of sewers, the vestry or district board in whom such sewer is vested may order such sum as they may deem just to be paid and contributed by the owner of the house to which such drain belongs towards the expense of the construction of such sewer, which sum shall, on the receipt thereof by such vestry or board, be paid over to the person or body aforesaid, and such vestry or board may, if they see fit, order and accept payment of such sum, with interest after a rate not exceeding five pounds for the hundred by the year, by instalments within any period not exceeding twenty years.

81. [*Erecting houses without proper waterclosets. Rep. and replaced by Pub. Hlth. (London) Act*, 1891, *sec.* 37, *post.*]

Power for vestries and district boards to authorise inspection of drains, privies, and cesspools.

82. (*z*) It shall be lawful for any such vestry or board, or for their surveyor or inspector, or such other person as they appoint, to inspect any drain, *watercloset*, *privy*, *cesspool*, *or water supply apparatus*, or sinks, traps, syphons, pipes, or other works or apparatus connected therewith, within the parish or district of such vestry or board, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing has been given to the occupier of the premises to which such drain, *watercloset*, *privy*, *cesspool*, *or water supply apparatus*, or other connected works or apparatus as aforesaid, is attached, or left upon the premises, or in case of emergency without notice, to enter, by themselves or their surveyor or inspector and workmen, upon any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

Penalty on persons improperly making or altering drains.

83 (*z*). In case any drain, *watercloset*, *privy*, *cesspool*, *or water supply*, or *water supply apparatus*, or other connected works or apparatus, herein-before mentioned, be found, on inspection, not to have been made or provided according to the directions or regulations of the vestry or district board, or contrary to the provisions of this Act, or in case any person, without the consent of the vestry or district board, construct, rebuild, or unstop any sewer, drain, *watercloset*, *privy*, *or cesspool* which may have

(*u*) **Construction of drains by vestry.** See *Hall* v. *Batley (Mayor, &c., of)*, *ante*, p. 139.

(*x*) **Recovery of expenses.** See secs. 225 and 226, *post*.

(*y*) **Before commencement of Act.** The provisions of this section are extended by the Met. Man. Amend. Act, 1862, sec. 59, *post*, to main sewers, and to sewers of every description built since January 1st, 1856, or hereafter to be built, at the expense of any person or body other than any commissioners of sewers.

(*z*) **Sections 82—85** are repealed by the Pub. Hlth. (London) Act, 1891, sec. 142, except so far as they relate to a drain or sewer, or any work or apparatus connected therewith. For the substituted provisions, see secs. 2, 10, 40, 41 and 42 of that Act, *post*.

been ordered by them not to be made, or to be demolished or stopped up, *or in case any person discontinue any water supply*, or destroy any connected works or apparatus as aforesaid, or in case any person, without the consent of the vestry or district board, break into any sewer (*a*) vested in such vestry or board, every person (*b*) so offending shall forfeit and pay any sum not exceeding ten pounds; and in case the person so making any sewer, drain, *watercloset*, *privy*, *cesspool*, or other works or apparatus as aforesaid, contrary to the directions or regulations (*c*) of the vestry or board, or contrary to the provisions of this Act, or, without such consent as aforesaid, constructing, rebuilding, or unstopping any sewer, drain, *watercloset*, *privy*, *or cesspool* which may have been ordered to be demolished or stopped up, *or discontinuing any water supply* or destroying any connected works or apparatus as aforesaid, or breaking into any such sewer as aforesaid, do not, within fourteen days after notice in writing by the vestry or board, cause such sewer, drain, *watercloset*, *privy*, *or cesspool* to be altered or reinstated in conformity with the directions of the vestry or board, or, as the case may be, to be demolished or stopped up, *or such water supply to be renewed*, or such connected works or apparatus to be restored, then and in every such case the vestry or board may cause the work to be done, and the expenses thereof shall be paid by the person who has so offended (*d*). 18 & 19 Vict. c. 120.

84 (*e*). If such drain, *watercloset*, *privy*, *cesspool*, *or water supply*, *or water supply apparatus*, or other connected works and apparatus, be found on inspection as aforesaid to be made to the satisfaction of the vestry or board, and in proper order and condition, they shall cause the same to be reinstated and made good as soon as may be, and the expenses of examination, reinstating, and making good such drain, *watercloset*, *privy*, *cesspool*, or other works or apparatus as aforesaid, shall be defrayed by the vestry or board, and full compensation (*d*) shall be made by them for all damages or injuries done or occasioned by the examination of any such drain, *watercloset*, *privy*, *cesspool*, or other works or apparatus as aforesaid. Where no default found expenses to be paid by vestry or board.

85 (*e*). If, upon such inspection as aforesaid, any drain, *watercloset*, *privy*, *or cesspool* appear to be in bad order and condition (*f*), or to require cleansing, alteration, or amendment, or to be filled up, the vestry or board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the inspection was made, requiring him Vestry or district board to cause drains, &c. to be put into proper condition, &c. where necessary.

(*a*) **Break into sewer.** For other provisions for the protection of sewers, see secs. 204 and 205, *post*; the Met. Man. Amend. Act, 1862, secs. 68 and 69. *post*; and the London Coun. Counc. (Genl. Powers) Act, 1894, secs. 8—17, and notes thereto *post*, p. 526.

(*b*) **Every person.** By the Met. Man. Amend. Act, 1862, sec. 65, *post*, the penalties declared by this section are extended to persons causing the commission of the offence.

(*c*) **Regulations.** The County Council has power, under sec. 202, *post*, to make bye-laws for regulating the construction and maintenance of drains, but no express power is conferred on the vestries or district boards to make either byelaws or regulations for that purpose. From the present section it would appear that they have an implied power to make regulations for the construction of drains.

(*d*) **Expenses. Compensation.** For the method of ascertaining and recovering the amount, see secs. 225 and 226, *post*.

(*e*) **Sections 82—85.** See note (*z*) on p. 142.

(*f*) **In bad order.** Where the drains are in good order, proceedings cannot be taken under this section to abate a nuisance arising from the inefficiency of the sewer into which the drain empties. *Att.-Genl.* v. *Clerkenwell Vestry* (1891), 3 Ch. D. 527; 60 L. J. Ch. 788. The vestry or board cannot be compelled by injunction to cause such notice to be given. *Ib.*

18 & 19 Vict. c. 120.

forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with by the person to whom it is given the vestry or board may, if they think fit, execute such works (*g*), and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises (*h*).

Where works interfere with any ancient mill, &c., compensation to be made or rights therein purchased.

86. [*Offensive ditches, drains, &c. to be cleansed or recovered. Rep. and replaced by Pub. Hlth. (London) Act*, 1891, *secs.* 43 *and* 142, *post.*]

Provided also, that where any work by any vestry or district board done or required to be done in pursuance of the provisions of this Act interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, full compensation shall be made to all persons sustaining damage thereby, in manner hereinafter provided (*i*), or it shall be lawful for the vestry or board, if they think fit, to contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water; and the provisions of this Act with respect to the purchases by the vestry or board hereinafter authorized shall be applicable to every such purchase as aforesaid.

Power to vestries and district boards to fill up ditches by the side of roads, and substitute pipes.

87. It shall be lawful for any vestry or district board, where they think fit, to cause the ditches at the sides of or across public roads and byeways and public footways (*k*) to be filled up, and to substitute pipe or other drains alongside or across such roads and ways, with appropriate shoots and means of conveying water from such roads and ways thereinto, and from time to time to repair and amend the same; and the surface of land gained by filling up such ditches may, if the vestry or board so think fit and direct, be thrown into such roads and ways, and be repairable as part thereof, and be under the control of the surveyors of the highways, or other person in charge of such roads, byeways, or footways.

88. [*Public conveniences. Rep. and replaced by Pub. Hlth. (London) Act*, 1891, *secs.* 44 *and* 142, *post.*]

Vestries and district boards may transfer their powers as to sewerage to the County Council.

89. If any vestry or district board desire to transfer to the Metropolitan Board of Works (*l*) the powers and duties vested in such vestry or district board in relation to sewerage and drainage, and a resolution for so transferring such powers and duties be passed by a majority at a meeting of such vestry or district board, specially convened for the purpose of con-

(*g*) **Execute such works.** The vestry or district board may, at their discretion, proceed for penalties in lieu of themselves executing such works. Met. Man. Amend. Act, 1862, sec. 64, *post.* See also *Hall* v. *Batley* (*Mayor, &c., of*) *ante*, p. 139.

(*h*) **Expenses. Compensation.**—See note (*d*) on page 143.

(*i*) **Compensation.** See secs. 225 and 226, *post.* This proviso is identical in terms with the proviso of sec. 50 of the repealed Metropolitan Commissioners of Sewers Act, 1848 (11 & 12 Vict. c. 112), under which an injunction was refused to restrain the Met. Bd. Wks. from constructing a sewer contiguous to an ancient spring and rivulet. *Stainton* v. *Woolrych*, *Stainton* v. *Met. Bd. Wks. and Lewisham Dist. Bd.*, 23 Beav. 225; 26 L. J. Ch. 300. As a result of the construction of the sewer, the rivulet and spring dried up, but, in the absence of negligence, the Board were held not to be liable. *Reg.* v. *Met. Bd. Wks.*, *post*, p. 163.

(*k*) **Ditches.** Under similar provisions of the West Ham Loc. Bd. of Hlth. Act, 1867 (30 Vict. c. lvi.), secs. 15 and 16, it was held that a ditch which was fenced off from the highway, and separated from it by a narrow strip of private land, was not a ditch at the side of or across a public road, and that the board had no right to fill it up. *Tuthill* v. *West Ham Loc. Bd.*, L. R. 8 C. P. 447; 37 J. P. 455.

(*l*) **Transfer to Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. These powers and duties cannot be transferred without the previous consent in writing of the County Council. Met. Man. Amend. Act, 1862, sec. 28, *post*.

sidering the question of such transfer, of which not less than fourteen days' notice shall have been given, and at which there shall be present not less than two-thirds of the whole number of such vestry or board, then such powers and duties, and all sewers and property vested in such vestry or board under this Act, for the purposes of or in connexion with such powers and duties, shall, at the expiration of one month after notice from such vestry or board shall have been given under their seal to the said *Metropolitan Board* (*m*) of such resolution having been passed as aforesaid, become vested in the said *Metropolitan Board* (*m*), and the provisions of this Act for defraying expenses incurred by such *Board* (*m*) in the execution of this Act shall extend to expenses incurred by them in the execution of the powers and duties so transferred to them. 18 & 19 Vict. c. 120.

All powers relating to paving, &c., to be vested in vestries and in district boards.

90. All the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish (*n*) mentioned in schedule (A.) to this Act, or any part of such parish now vested in any commissioners, or in any body other than the vestry of such parish, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish or part, or of the inhabitants thereof, (except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor or the administration of any money or other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto,) now vested under any local Act of Parliament in any commissioners, or in any body (*o*) other than the vestry of such parish, or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the vestry of such parish under this Act; and all the duties, powers, and authorities for or in relation to the paving, lighting, watering, cleansing, or improving of any parish included in any district mentioned in schedule (B.) to this Act, or any part of such parish, now vested in any commissioners, vestry, or other body, or in any officer of any commissioners or other body, and all other duties, powers, and authorities in anywise relating to the regulation, government, or concerns of any such parish, or part, or of the inhabitants thereof (except such duties, powers, and authorities as relate to the affairs of the church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, so far as such duties, powers, and authorities relate thereto), now vested under any local Act of Parliament in any commissioners, vestry, or other body (*o*), or in any such officer, shall cease to be so vested, and shall, save as herein otherwise provided, become vested in and be performed and exercised by the board of

(*m*) **Met. Bd. Wks.** See note (*l*) on page 144.

(*n*) **Duties, powers, &c., for paving, lighting, &c.** The powers of improving and regulating streets, and for the suppression of nuisances, contained in the Metropolitan Paving Act, 1817 (57 Geo. 3, ch. xxix.), commonly called Michael Angelo Taylor's Act, *post*, p. 491, are extended to the Metropolis by the Met. Man. Amend. Act, 1862, sec. 73. As to the power of making church rates, see Met. Man. Amend. Act, 1856, secs. 1 and 2, *post*; and for a declaration of what duties, powers, and privileges are transferred by the present section, see *ib.* sec. 3, and note thereto.

(*o*) **Vested under local Acts.** All Acts of Parliament in force in any parish or place to which this Act extends are repealed by sec. 247, *post*, so far as they are inconsistent with this Act. But see *London and Blackwall Ry. Co.* v. *Limehouse Dist. Bd.*, cited in note thereto.

For cases in which powers have been held to be transferred under this section, see *Reg.* v. *Lambeth Vestry*, 3 B. & S. 1; and *Reg.* v. *Trustees of Tower Hill*, 30 J. P. 516.

18 & 19 Vict. c. 120.

works for such district; and the provisions of every such Act of Parliament as aforesaid shall be applicable to the vestry of every parish mentioned in the said schedule (A.) and to every such district board accordingly, and the offices of all commissioners and persons whose powers are determined by this Act shall cease and be determined, and there shall be no new appointment or election to any such office.

Saving as to Baths and Washhouses, Metropolitan Burials, Markets, and Charitable Trusts Acts

9 & 10 Vict. c. 74.

15 & 16 Vict. c. 85.

91. Provided always, that, save as regards the appointment of auditors, nothing in this Act shall divest the vestry of any parish, or any commissioners or burial board appointed by any vestry, of any powers or property vested in them respectively under the provisions of the Baths and Washhouses Act, 1846 (*p*), or any Act amending the same, or under the provisions of the Burial Act, 1852 (*q*), or any Act amending the same, or in anywise affect the provisions of any of the said Acts; and nothing in this Act shall extend to or affect any rights, privileges, powers, or authorities vested in any persons in reference to any market (*r*), or any powers or rights for or in relation to the administration of any charitable trusts, save that any powers or rights in relation to any such trusts vested or which would have become vested in the existing vestry of any parish shall be vested in the vestry of such parish as constituted by this Act.

Expenses incurred under existing powers relating to paving, &c., to be deemed expenses incurred in execution of this Act.

92. Provided also, that all expenses of paving, lighting, watering, cleansing, or improving any parish or any part of any parish mentioned in either of the schedules (A.) and (B.) to this Act, and all other expenses in relation to the regulation, government, or public concerns of any such parish or part, or of the inhabitants thereof, except only expenses incurred in relation to the affairs of the church, or for the management or relief of the poor, and other expenses by law payable out of any poor rate, which are not herein provided for, shall be deemed expenses incurred in the execution of this Act, and shall be defrayed accordingly (*s*).

As to the transfer of property.

93. All property, matters, and things whatsoever vested in such commissioners or other body, or in any such officer as aforesaid, under any such Act, in connexion with any such duties or powers as aforesaid, hereby transferred to the vestry of any parish or the board of works for any district, shall upon the commencement of this Act be vested in such vestry or board; and where any such property, matters, or things are vested in any such commissioners or body, or officer, acting for parts extending beyond such parish or district, the Metropolitan Board of Works shall by their order declare in what vestry or district board they shall be vested, and may, if they see fit, apportion the same between the vestries and district boards within whose respective districts and parishes such parts may be situate, and the same shall be vested accordingly; and any money in the possession of any such commissioners or other body, or any such

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(*p*) **Baths and Washhouses Act, 1846.** *Post*, vol. ii. tit. "*Baths and Washhouses.*"

(*q*) **Burial Act, 1852.** See *post*, vol. ii. tit. "*Burial.*"

(*r*) **Market.** Where there is an exclusive right of market within seven miles round about the City by virtue of charters granted by Charles II. and James II., the establishment within the seven miles of a depôt or row of stalls let to dealers for the purpose of selling fruit or vegetables is a disturbance of the right of market. *Gt. Eastern Rly. Co.* v. *Goldsmid*, 9 App. Cas. 927; 54 L. J. Ch. 162. So is the erection of posts by a district board by the side of a public footpath along a road leading into the area of the market so as to interfere with the access to it. *Horner* v. *Whitechapel Bd. Wks.*, *post*, p. 153.

(*s*) **Expenses.** For provisions as to defraying expenses incurred by vestries and district boards, see secs. 158—169, *post*.

officer, which becomes vested in any such vestry or board under this enactment, and the income of any other such property, until sold or disposed of, shall be applicable, as nearly as may be, for the like purposes as if this Act had not been passed. 18 & 19 Vict. c. 120.

Existing contracts, &c., to remain valid.

94. Provided always, that all contracts, agreements, bonds, covenants, or securities made or entered into with or in favour of or by such commissioners or body, or any person in their behalf, or any such officer as aforesaid, before the commencement of this Act, shall remain as valid and effectual and be proceeded on and enforced as if this Act had not been passed (*t*); and no action, suit, prosecution, or proceeding commenced or carried on by or against such commissioners or body or any of them respectively shall abate or be discontinued or prejudicially affected by this Act, but shall continue and take effect as if this Act had not been passed; and all moneys coming to such commissioners or body under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, and which would have been applicable by them if this Act had not been passed for the purposes of any of the duties or powers hereby transferred to any vestry or district board, shall be paid over to such vestry or board, or as they may direct, and be applied for the like purposes; and all moneys and liabilities which such commissioners or body, or officer, would have been liable to pay or discharge, under any such contract, agreement, bond, covenant, security, action, suit, or proceeding, out of any rates to be levied under any such powers as aforesaid, if this Act had not been passed, and all costs, damages, and expenses which such commissioners or body, or any of them respectively, might, if this Act had not been passed, have legally defrayed out of any such rates, shall be paid out of rates to be levied by such vestry or board as hereinafter provided.

95. [*Rep. by* 38 *&* 39 *Vict. c.* 66 (*Statute Law Revision*).]

Powers and duties of surveyors of highways, and property vested in them, transferred to vestries and district boards.

96. Every vestry and district board shall, within their parish or district (exclusively of any other persons whatsoever), execute the office of and be surveyor of highways, and have all such powers, authorities, and duties (*u*), and be subject to all such liabilities (*x*), as any surveyor of highways in

(*t*) **Action on existing contract.** See *Sinnott* v. *Whitechapel Dist. Commissioners*, 27 L. J. C. P. 177; 22 J. P. 290. Sec. 180, *post*, provides for the discharge of existing liabilities under local Acts relating to paving, &c.

(*u*) **Powers and duties of surveyor.** As to the powers, authorities, and duties of a surveyor of highways, see the Highway Act, 1835 (5 & 6 Will. 4, c. 50), and "Pratt's Law of Highways."

(*x*) **Liabilities of highway authority.** No action for damages resulting from an accident caused by the non-repair of a highway lay against a surveyor of highways. *Davis* v. *Young*, 7 H. & N. 775; 31 L. J. Ex. 250. The transfer to a public corporation of the obligation to keep public bridges and roads in repair does not in itself render such corporation liable to an action in respect of mere non-feasance. In order to establish such liability it must be shown that the Legislature has used language indicating an intention that this liability shall be imposed. *Cowley* v. *Newmarket Loc. Bd.* (1892), A. C. 345; 62 L. J. Q. B. 65; *Pieton Municipality* v. *Geldert* (1893), A. C. 524; 63 L. J. P. C. 37. An action will not, therefore, lie against a highway authority for damages arising from an accident caused by the non-repair of a road. *Parsons* v. *St. Matthew, Bethnal Green*, L. R. 3 C. P. 56; 37 L. J. C. P. 62; *Thompson* v. *Brighton (Mayor, &c., of)*, *infra*; *Sydney Municipal Council* v. *Bourke* (1895), A. C. 433; 64 L. J. P. C. 140; or footway. *Taylor* v. *St. Mary Abbott's, Kensington*, 2 T. L. R. 668; nor for neglect to remove an obstructive bridge spanning a road, which existed at the time the road was dedicated to the public. *Warner* v. *Wandsworth Bd. Wks.*, 53 J. P. 471.

Though not liable, as surveyors of highways, for mere non-feasance, the vestries and district boards are liable for acts of misfeasance, as where their servant negligently

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England is now or may hereafter be invested with or liable to by virtue of his office, under the laws for the time being in force, so far as such powers, authorities, duties, and liabilities are not inconsistent with this Act; but all expenses which under any such law ought to be defrayed by highway rates shall be defrayed by means of the rates to be raised under this Act, and all moneys which would be applicable in aid of such highway rates shall be applied in aid of the said rates to be raised under this Act, and no such vestry or board shall be subject to any provisions concerning the accounts of surveyors of highways, or requiring any returns to be made to any special sessions; and all streets being highways (*y*), and

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leaves a heap of stones in the road without a light. *Foreman* v. *Canterbury (Mayor, &c., of)*, L. R. 6 Q. B. 214; 40 L. J. Q. B. 138, in which *Holliday* v. *St. Leonard, Shoreditch*, 11 C. B. (N. S.) 192; 30 L. J. C. P. 361, was considered by Blackburn, J., to be overruled; or where their servant negligently leaves a heap of stones projecting into the road. *Tucker* v. *Axbridge Loc. Bd.*, 53 J. P. 87. They will be liable for damage to gas pipes caused by their heavy steam rollers. *Gas Light and Coke Co.* v. *St. Mary Abbott's, Kensington*, 15 Q. B. D. 1; 54 L. J. Q. B. 414; *Gas Light, &c., Co.* v. *St. George's, Hanover Square*, 3 T. L. R. 581. And they will be liable if they use a steam roller on a highway so as to cause a nuisance, though they may not be guilty of negligence. *Jeffrey* v. *St. Pancras Vestry*, 10 R. 554; 63 L. J. Q. B. 618.

Where a surveyor employed a contractor to raise the level of a road, but made no agreement as to lighting and himself superintended the execution of the work, he was held liable in an action for damages caused by the road being left at night in an unsafe condition without light or fencing. *Pendlebury* v. *Greenhalgh*, 1 Q. B. D. 36; 45 L. J. Q. B. 3; *Taylor* v. *Greenhalgh*, 24 W. R. 311. But, *semble*, that a surveyor would not be liable if he contracts with a third person to carry out the work with all its incidents and does not himself interfere. *Ib.*; *Reid* v. *Darlington Highway Bd.*, 41 J. P. 381. Where a person employs a contractor, he is not liable for the contractor's collateral negligence; but he is liable for the failure of the contractor to perform the duty of his employer, whether the failure be attributable to negligence or not. *Hardaker* v. *Idle Dist. Counc.* (1896), 1 Q. B. 335; 65 L. J. Q. B. 363. In that case a district council employed a contractor to construct a sewer for them. Owing to the negligence of the contractor, a gas main was broken, and an explosion occurred. *Held*, that the district council owed a duty to the public so to construct the sewer as not to injure the gas main, and that they were, therefore, liable in an action for damages for injuries sustained by persons residing in a neighbouring house, who were injured by the explosion.

Where the vestry or district board, besides being the highway authority, are also constituted some other authority, they may be liable for negligence on or about a highway whilst acting in the latter capacity, whether such negligence consists of mere nonfeasance or of acts of misfeasance. A vestry, in its capacity as the authority for watering the streets, laid down an iron flap and allowed it to wear smooth, and thus become slippery and dangerous, and were held liable in an action for damages. *Blackmore* v. *Mile End Vestry*, 9 Q. B. D. 451; 51 L. J. Q. B. 496; following and confirming *White* v. *Hindley Loc. Bd.*, L. R. 10 Q. B. 219; 44 L. J. Q. B. 114. Where a vestry, acting as the sewer authority, laid down a new sewer, and so negligently covered up an old iron water pipe which had been laid bare that it afterwards leaked and caused the road to subside under a heavily laden van, they were held liable. *Cox* v. *Paddington Vestry*, 64 L. T. 566. See also *Smith* v. *West Derby Loc. Bd.*, 3 C. P. D. 423; 47 L. J. C. P. 607. A water company was held not liable, in the absence of negligence, for an accident caused by a person falling over a water plug which they had properly fixed in the roadway and which was in good repair, but projected above the roadway in consequence of the latter having worn away. *Moore* v. *Lambeth Waterworks Co.*, 17 Q. B. D. 462; 55 L. J. Q. B. 304. A municipal corporation which was both the highway authority and the sewer authority, acting in the latter capacity, inserted in the street a man-hole to one of their sewers. The man-hole was properly laid and in good repair, but the road was subsequently allowed to wear away, so that the cover projected above the level of the road, and a horse stumbled over it and was injured. It was held that the corporation was not liable, for there had been no negligence on their part as the sewer authority, and the omission to repair the road was an act of mere non-feasance, for which no action would lie against them as the highway authority. *Thompson* v. *Brighton (Mayor, &c., of)* (1894), 1 Q. B. 332; 63 L. J. Q. B. 181.

(*y*) **Streets being highways.** For definition of "street," see sec. 250 and note thereto, *post*. A highway is defined in 2 Smith's Leading Cases, 159, to be "a passage open to all the King's subjects." It is not necessarily a thoroughfare, and may be a

the pavements (*z*), stones, and other materials thereof, and all other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, or by any vestry or district board under this Act, shall vest in and be under the management and control of the vestry or district board (*a*) of the parish or district in which such highways are situate. 18 & 19 Vict. c. 120.

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way which is closed at one end, e.g., a mews. *Vernon* v. *St. James', Westminster*, 16 Ch. D. 449 ; 50 L. J. Ch. 81. "It is an established maxim, once a highway, always a highway" *per* Byles, J. (in *Dawes* v. *Hawkins*, 8 C. B. (N. S.) 848 ; 29 L. J. C. P. 343 ; and a highway can only be stopped up or diverted by an order of the justices under secs. 84—91 of the Highway Act, 1835 (5 & 6 Will. 4, c. 50), or under the Metropolitan Paving Act, 1817, sec. 79, *post*, p. 510 ; or pursuant to statutory authority, express or implied, given for stopping or diverting particular highways. It was held that an urban authority in whom the roads were vested under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), had no power to stop up or divert a street except pursuant to the Highway Act, 1835. *Reg.* v. *Platts*, 49 L. J. Q. B. 848 ; 43 L. T. (N. S.) 159. If a highway becomes a *cul-de-sac* in consequence of one end being legally stopped up, it nevertheless continues to be a highway. *Reg.* v. *Burney*, 31 L. T. 828 ; 39 J. P. 599. But where both ends are legally stopped up, it ceases to be a highway (*Bailey* v. *Jamieson*, 1 C. P. D. 329 ; 40 J. P. 486) ; and the adjoining owners may resume their former rights of property in the land, discharged from the easement. Where part of a highway was stopped up, and part of another highway was diverted, by an order of quarter sessions, it was held that, as such parts ceased to be highways, the interest of the vestry in the soil was determined, and that the owner of the adjoining land was entitled to convert them to his own use, without purchasing them from the vestry. *Rolls* v. *St. George's, Southwark*, 14 Ch. D. 785 ; 49 L. J. Ch. 691.

Dedication of a right of way may be presumed from continuous user, but can only be presumed in favour of the public generally, and not in favour of the inhabitants of a particular parish. *Bermondsey Vestry* v. *Brown*, L. R. 1 Eq. 204 ; 30 J. P. 118. The same evidence of user will raise a presumption of the dedication of a right of way along a sea or river wall or embankment as in any other case of uninterrupted and open user by the public. *Greenwich Bd. Wks.* v. *Maudsley*, L. R. 5 Q. B. 397 ; 39 L. J. Q. B. 205.

There may be a partial dedication to the public for a particular use, as for foot passengers only, or subject to the rights of certain persons to use the space for the purposes of their trade (*Le Neve* v. *Mile End Old Town Vestry*, 8 E. & B. 1054 ; 27 L. J. Q. B. 208 ; *Chelsea Vestry* v. *Stoddart*, 43 J. P. 782) ; or subject to an obstruction, such as a railway bridge (*Warner* v. *Wandsworth Bd. Wks.*, 53 J. P. 471) ; or to a reservation of market rights. *Att.-Genl.* v. *Horner*, 11 App. Cas. 66 ; 55 L. J. Q. B. 193 ; *Horner* v. *Whitechapel Bd. Wks.*, 55 L. J. Ch. 289 ; 53 L. T. (N. S.) 842. As to the rights of adjoining owners in the soil of a highway and the limits to the public right of user, see *Harrison* v. *Duke of Rutland* (1893), 1 Q. B. 142 ; 62 L. J. Q. B. 117.

(*z*) **Pavements.** The flagstones of a pavement over, and forming the roof of, a cellar, have been held to be part of the highway, vesting in, and repairable by, the vestry. *Hamilton* v. *St. George's, Hanover Sq.*, *post*, p. 151.

(*a*) **Vesting of streets.** Something more than an easement passes to the vestries and district boards. They have some right of property in and on and in respect of the soil which enables them as owners to bring a possessory action against trespassers. The soil and freehold in the ordinary sense of the words "soil and freehold," that is to say, the soil from the centre of the earth up to an unlimited extent into space, does not pass, and no stratum or portion of the soil defined or ascertainable, like a vein of coal, or stratum of iron, stone, or anything of that kind passes ; but the vestries and district boards have only the surface, and, with the surface, such right below the surface as is essential to the making, maintenance, occupation, and exclusive possession of the street as a highway for the use of the public. *Per* James, L. J., in *Rolls* v. *St. George the Martyr, Southwark*, *supra*. See further as to the meaning of "vest," *Wandsworth Bd. Wks.* v. *London and South-Western Ry. Co.*, 31 L. J. Ch. 854 ; 8 Jur. (N. S.) 691 ; *Coverdale* v. *Charlton*, 4 Q. B. D. 104 ; 48 L. J. Q. B. 128 ; *Tunbridge Wells (Mayor, &c., of)* v. *Baird* (1896), A. C. 434 ; 65 L. J. Q. B. 451 ; and *Salt Union, Ltd.* v. *Harvey*, 13 T. L. R. 297 ; 61 J. P. 212. Where a road was carried over a railway by means of a bridge built by the railway company in pursuance of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), secs. 46—51, it was held that the vesting of the road in the district board did not give the board any greater interest in the bridge and its fences than they had in the strata upon which the portion of the road carried by the bridge originally rested. The bridge and its fences

18 & 19 Vict. c. 120.

97. [*Rep. by 38 & 39 Vict. c. 66 (Statute Law Revision).*]

Vestry or district board to cause streets to be paved.

98. It shall be lawful for every vestry and district board from time to time to cause all or any of the streets within their parish or district, or any part thereof respectively, to be paved or repaired (*b*) when and as often and in such form and manner and with such materials as such vestry or board think fit, and to cause the ground or soil thereof to be raised or lowered, and the course of the channels running in, into, or through the same to be turned or altered, in such manner as they think proper, and to alter the position of any mains or pipes in or under such street, such alteration to be made subject to the approval of the engineer of the company to which such mains or pipes belong.

Owners possessing freehold of courts, &c., to pave the same.

99. Provided always that whenever the freehold of any court, passage, or public place, not being a thoroughfare, is vested in the owner of any adjoining house, the paving of such court, passage, or public place shall be done by such owner, if deemed expedient or necessary by the vestry or district board

Owner of courts to drain them, and keep the pavement, &c., in repair.

100. The owner of any such court, passage, or public place, not being a thoroughfare, shall, if required by the vestry or district board of the parish or district in which the same is situate, to the satisfaction of such

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were the property of the railway company, although burdened by a public right of way in perpetuity. *Gt. Eastern Rly. Co.* v. *Hackney Dist. Bd.*, 8 App. Cas. 687; 52 L. J. M. C. 105.

This section does not confer upon a vestry or district board such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street at a great height and causing no appreciable danger. *Wandsworth Bd. Wks.* v. *United Telephone Co.*, 13 Q. B. D. 904; 53 L. J. Q. B. 449. The erection of electric lighting wires over streets is now regulated by the Electric Lighting Act, 1882, sec. 14, *post*, vol. ii. tit. "*Electric Lighting*;" and of other wires, by the London Overhead Wires Act, 1891, *post*, vol. ii. tit. "*Overhead Wires*." A local authority under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55) were held to be entitled, as the lighting authority, to erect poles in the streets to carry electric wires for lighting them. *Fareham Loc. Bd.* v. *Smith*, 7 T. L. R. 443; 90 L. T. Jl. 466.

As to the vesting of the subsoil of streets for the purpose of providing public lavatories, &c., see the Pub. Hlth. (London) Act, 1891, sec. 44, *post*.

The streets vest in the vestries and district boards subject to the same obstructions and reservations of rights as existed at the time they became so vested (*Chelsea Vestry* v. *Stoddart*, *supra*; *Warner* v. *Wandsworth Bd. Wks.*, *supra*; *Att.-Gen.* v. *Horner*, *supra*; and *Horner* v. *Whitechapel Bd. Wks.*, *supra*); and subject also to the reasonable use of the footways by the adjoining occupiers for access and conveyance of goods, to their premises. *St. Mary, Newington* v. *Jacobs*, L. R. 7 Q. B. 47; 41 L. J. M. C. 72. Where the occupier and owner of premises contiguous to a highway conveyed his machinery across the pavement in trolleys, and in doing so crushed the flags, it was held that his use of the footway was reasonable, and that he was not liable for the cost of repair. *Ib.*

All the property, rights, &c., of the surveyors of highways are deemed to have become transferred to and vested in the respective vestries and district boards by virtue of this Act; and so much of the income of such property, &c., as may be subject to any use or trust for the repair of highways within the Metropolis is to be applicable to the repair, maintenance, and improvement of such highways. Met. Man. Amend. Act, 1862, sec. 71, *post*.

(*b*) **Paving streets.** For definition of "street" see sec. 250, and note thereto, *post*. As to repairing streets not being highways, see sec. 106, *post*. As to paving "new streets" see sec. 105, *post*, and sec. 77 of Met. Man. Amend. Act, 1862, *post*. As to flagging footways laid out at the passing of the present Act, which have been repaired by a vestry or district board, see Met. Man. Act, 1862, Amend. Act, 1890 (53 & 54 Vict. c. 54), *post*; and repairing roads or ways not being streets, see Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), sec. 3, *post*. The word "pave" applies to and includes the formation of the roadway and footway of any street. Met. Man. Amend. Act, 1862, sec. 112, *post*. This section does not confer on vestries and district boards the power of laying down a tramway, which is not a paving or repairing of a street within the meaning of the section. *Reg.* v. *Train*, 31 L. J. M. C. 169.

vestry or district board sufficiently pave, cover the surface of, or repair the same, and lay, at a proper level, through, over, under, or along such part thereof as such vestry or board may require, a drain, channel, or gutter, and keep such pavement or covering, and drain, channel, or gutter, in good repair, to the satisfaction of such vestry or board; and if any such owner of any court, passage, or public place, not being a thoroughfare, do not sufficiently pave or cover the same as aforesaid, or do not lay down therein such drain, channel, or gutter, or do not repair the same respectively, to the satisfaction of such vestry or board, within fourteen days after notice in writing requiring him so to do has been given to him by such vestry or board, every such person so offending shall forfeit and pay any sum not exceeding five pounds (*c*).

18 & 19 Vict. c. 120.

Penalty on owners for neglect.

101. No vault, arch, or cellar shall be made under any street without the consent of the vestry or district board (*d*) of the parish or district in which the same is situate; and all such vaults, arches, and cellars hereafter to be made within any parish or district mentioned in either of the schedules (A.) and (B.) to this Act shall be substantially made (*e*), and so as not to interfere or communicate with any drain or sewer under the control of any vestry or district board, or the *Metropolitan Board of Works*, without their consents respectively first obtained; and if any vault, arch, or cellar be made contrary to this provision, it shall be lawful for the vestry or district board, or for the *Metropolitan Board of Works*, to fill up or alter the same, and the expenses incurred thereby shall be paid by the owner of such vault, arch, or cellar.

Vaults and cellars under streets not to be made without the consent of the vestry or board.

102. All vaults, arches, and cellars made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the schedules (A.) and (B.) to this Act, and all openings into the same in any such street, shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong (*f*); and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order, and to recover the expenses thereof from such owner in the manner hereinafter provided (*g*).

Vaults, &c., under streets to be repaired by owners or occupiers.

103, 104. [*Occupation of underground rooms as dwellings. Rep. and replaced by the Pub. Hlth. (London), Act*, 1891, *secs.* 96, 97, *and* 142, *post.*]

(*c*) **Penalty.** In lieu of enforcing this penalty, the vestry or board may themselves execute the works, and recover the expenses from the owner, either by action or summarily. Met. Man. Amend. Act, 1862, sec. 81, *post*.

(*d*) **Consent of vestry, &c.** Any person who deems himself aggrieved by any order or act of any vestry or district board under this section, may within seven days appeal to the county council. Sec. 211, *post*.

(*e*) **Substantially made.** All arches and other constructions under public ways must be made in conformity with the requirements of the London Building Act, 1894, sec. 72, *post*.

(*f*) **Repair of vaults, &c.** See also the Metropolitan Paving Act, 1817, secs. 70 and 71, *post*, p. 507, where the flagstones of the pavement rested on the walls, and formed the roof of a cellar, it was held that the vestry was bound to repair the flagstones as part of the pavement. *Hamilton* v. *St. George's, Hanover Square*, L. R. 9 Q. B. 42; 43 L. J. M. C. 41.

(*g*) **Recover expenses.** See secs. 225 and 226, *post*.

18 & 19 Vict. c. 120.

Provisions for paving new streets.

105. In case the owners of the houses (*h*) forming the greater part of any new street (*i*) laid out or made or hereafter to be laid out or made, which is not paved (*k*) to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved, as hereinafter mentioned, or if such vestry or board deem it necessary or expedient (*l*) that the same should be so paved, then, and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriageway and footpaths thereof, or any part of such breadth (*m*), and from time to time keep such pavement in good and sufficient repair (*n*) : and the owners of the houses forming such street (*o*) shall, on demand, pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor (*p*) for the time being of the vestry or board) ; and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of the houses by whom the said sum of money has been paid ; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses

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(*h*) **Owners of houses.** "Owner" is defined by sec. 250, *post*. As to what is a house, see note to sec. 73, *ante*. "Owners of the land bounding or abutting" on any "new street" are also liable to contribute to the expenses of paving the same. Met. Man. Amend. Act, 1862, sec. 77, *post*.

(*i*) **New street.** For definition of "street" see sec. 250, *post*, and note (*z*) thereto, and for definition of "new street" see Met. Man. Amend. Act, 1862, sec. 112, *post*, and note (*x*) thereto. The expression "new street" in the present section is not limited or restricted by the definition of "new street" in the said sec. 112, and includes a new street in the ordinary and popular sense of the term. *St. Giles', Camberwell* v. *Crystal Palace Co*, (1892), 2 Q. B. 33 ; 61 L. J. Q. B. 802 ; *Davis* v. *Greenwich Dist. Bd.* (1895), 2 Q. B. 219 ; 64 L. J. M. C. 257.

(*k*) **Paved.** See the Met. Man. Amend. Act, 1862, sec. 112, *post*, for meaning of the word "pave."

(*l*) **Necessary or expedient.** The vestry or district board are the sole judges of the necessity or expediency of the work ; and the question of its necessity or expediency cannot be entertained by the tribunal before which they seek to recover the expenses. *Chelsea Vestry* v. *Evans*, 35 J. P. 23 ; *Stroud* v. *Wandsworth Bd. Wks.* (1894), 1 Q. B. 64 ; 63 L. J. M. C. 88.

(*m*) **Any part of breadth.** The owners on both sides of the street are chargeable with the cost of paving, though the footway on one side only be paved. *Mile End Vestry* v. *Whitechapel Guardians*, 1 Q. B. D. 681 ; 46 L. J. M. C. 138. Where only a section of the footway is paved, the liability is limited to those owners (on both sides of the road) of houses or land abutting on the paved section. *Paddington Vestry* v. *North Metropolitan Rly. and Canal Co.* (1894), 1 Q. B. 633 ; 63 L. J. Q. B. 316.

(*n*) **Keep in repair.** After a vestry or district board have paved a new street under this section, they are bound to keep it in repair, whether it becomes a highway or not. *Reg.* v. *Hackney Bd. Wks.*, L. R. 8 Q. B. 528 ; 42 L. J. M. C. 151. See also *St. Giles, Camberwell* v. *Hunt*, *post*, p. 265. But they may, at the expense of the adjoining owners, repair any carriage road not being a street, which has been used for not less than six months for public traffic, without prejudice to their power to subsequently pave the road as a "new street." Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), sec. 3, *post*.

(*o*) **Forming such street.** A school house, situated in a large yard, separated from the street by a row of houses, the only access to the school being by a private passage from the street to the school yard, though not actually one of the houses "forming a street," was held to practically form part of it within the meaning of this section. *London School Bd.* v. *St. Mary, Islington*, 1 Q. B. D. 65 ; 45 L. J. M. C. 1.

(*p*) **Determined by surveyor.** The signed estimate of the surveyor, which had been acted upon by the vestry, was held to be some evidence that the surveyor, who was not called, had made it and determined the amount. *Hobman* v. *Greenwich Bd. Wks.*, 58 J. P. 703. As to the apportionment between the various owners see sec. 77 of the Met. Man. Amend. Act, 1862 (25 & 26 Vict. c. 102), and note (*p*) thereto, *post*, p. 256.

shall, on demand pay (*q*) to the said vestry or board such further sum of money as, together with the sum already paid, amounts to such actual expenses (*r*). 18 & 19 Vict. c. 120.

Vestry or board may declare their intention of repairing any street not being a highway.

106. The vestry or district board of any parish or district may, if they think fit, by notice in writing put up in any part of any street in their parish or district, not being a highway (*s*), declare their intention of repairing the same under this Act (*t*), and thereupon the same shall be from time to time repaired by them under the authority of this Act (*u*). . . .

Act not to authorise the making any thoroughfare without the consent of the proprietor of the estate.

107. Nothing in this Act shall extend or be construed to extend to authorise the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way, without the consent of the proprietor (*x*) of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way, shall be situate (*y*).

Vestries and district boards may place fences, &c., to footways.

108. It shall be lawful for every vestry and district board from time to time to place any posts, fences, and rails on the sides of any footways or carriageways in their parish or district, for the purposes of safety, and to prevent any carriage or cattle from going on the same, and also to place any posts or other erections in any carriageways so as to make the crossings thereof less dangerous for foot passengers (*z*), and also from time

(*q*) **Owners shall pay.** The vestry or district board have no authority to charge the expenses of paving the footway of a "new street" upon the general rate, and are bound to obtain payment thereof from the adjoining owners. *Dryden* v. *Putney Overseers*, 1 Ex. D. 223; 34 L. T. (N. S.) 69. If they do improperly charge such expenses on the general rate, the Court will order them to restore the amount to the general rate, and to levy the same upon the adjoining owners. *Att.-Gen.* v. *Wandsworth Bd. Wks.*, 6 Ch. D. 539; 46 L. J. Ch. 771.

Payment may be accepted by instalments spread over a period not exceeding twenty years. Met. Man. Amend. Act, 1862, secs. 77 and 96, *post*.

(*r*) **Actual expenses.** The costs of serving notices of apportionment, obtaining names of owners, &c., though third persons are employed for that purpose, may be recovered as expenses incidental to the cost of paving. *Poplar Dist. Bd.* v. *Love*, 38 J. P. 246; 29 L. T. (N. S.) 915. See also *Walthamstow Loc. Bd.* v. *Staines* (1891), 2 Ch. 606; 60 L. J. Ch. 738.

(*s*) **Not being a highway.** As to repairing a road or way not being a street, see the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), sec. 3, *post*, p. 273.

(*t*) **Under this Act.** Where a vestry declared its intention of repairing a street under this section it was held that they were not precluded from paving the street as a "new street" under sec. 105, before doing the repairs. *St. George, Southwark* v. *Pethebridge*, 31 J. P. 279.

(*u*) **Section 106.** The remainder of this section is repealed and replaced by the Met. Man. Amend. Act, 1862, sec. 80, *post*.

(*x*) **Proprietor.** "Owner" is defined in sec. 250, *post*, but "proprietor" is not defined by the Act.

(*y*) **Bar, gate, rail, &c.** For restrictions on the erection of posts, rails, bars, &c., in, upon, over, or under any street, see the Lon. Buildg. Act, 1894, sec. 199, *post*.

(*z*) **Fencing footways.** See also sec. 58 of the Metropolitan Paving Act, 1817, *post*, p. 502, providing for the erection of posts for the preservation of pavements and the prevention of accidents; and imposing penalties for damaging such posts. A similar power, conferred in somewhat different language by sec. 68 of the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), was held to be discretionary only, and not to impose an absolute duty. *Wilson* v. *Halifax (Mayor, &c., of)*, L. R. 3 Ex. 114; 37 L. J. Ex. 44. And see *Rotheram* v. *Fullerton*, 50 L. T. (N. S.) 364; and *Hurst* v. *Taylor*, 14 Q. B. D. 918; 54 L. J. Q. B. 310. Commissioners of sewers who used as a sewer an ancient ditch which ran alongside the highway were held to be under no obligation to fence the sewer, so as to protect persons frequenting the highway. *Cornwell* v. *Metropolitan Commissioners of Sewers*, 10 Ex. Rep. 771; 19 J. P. 313. The powers conferred by this section do not authorise the erection of posts on the side of a public footpath so as to obstruct the access to a private market, and interfere with the enjoyment of acquired market rights. *Horner* v. *Whitechapel Bd. Wks.*, 55 L. J. Ch. 289; 53 L. T. (N. S.) 842.

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to time to repair and renew any such posts, rails, or fences, or to remove the same, or any other obstruction or encroachment on any carriageway or footway (*a*).

Notice to be given by companies to vestries and district boards when pavement, &c., is required to be taken up.

109. No company or person shall break up or open the pavement, surface, or soil of any street, the paving whereof is under the control and management of the vestry or district board of any parish or district, for the purpose of making and laying down any main of pipes or for any other purpose whatsoever, except in cases of emergency arising from defects in pipes or other works, without having previously given three clear days notice in writing to such vestry or district board, stating in such notice the name of the street and the particular part thereof in which such pavement, surface, or soil is intended to be broken up or opened, the day on which the work is proposed to be commenced, and the time within which it will be completed; and in any such case of emergency as aforesaid such company or person shall, within twelve hours after they or he begin to break up or open such pavement, surface, or soil as aforesaid, give such notice as aforesaid to the said vestry or district board; and no such pavement, soil, or surface shall be broken up or opened for the purpose of laying down any new main of pipes for the conveyance of water during any part of the months of December, January, and February without the consent of the said vestry or district board; and no gaslight company shall at any time break up or open any such pavement, surface, or soil for the purpose of laying down any new mains of pipes, without the consent in writing of the said vestry or district board (*b*); and every company or person offending against this enactment shall for every such offence forfeit a sum not exceeding five pounds (*c*), and shall, within twenty-four hours after notice in writing from the vestry or district board, cause such mains or pipes to be taken up and removed, and the pavement, surface, or soil to be reinstated and put into its former state: Provided always, that any gaslight company may break up or open any such pavement, surface, or soil, for the purpose of laying down and attaching to mains and pipes already existing any new service pipes, on giving to the said vestry or district board, three days at the least before so doing, notice of their intention to break up or open such pavement, surface, or soil for such purpose (*d*).

(*a*) **Removal of obstruction.** See *Reynolds* v. *Presteign Urb. Dist. Counc.*, and *Louth Rur. Dist. Counc.* v. *West*, *ante*, p. 12. As to the powers of the county council to remove obstructions and encroachments from highways and streets, see the Loc. Govt. Act, 1888, sec. 11 (1), *ante*; and the Lon. Buildg. Act. 1894, sec. 199, *post*.

(*b*) **Consent of vestry, &c** If the local authority refuse or delay their consent to the Gaslight and Coke, the South Metropolitan, or the Commercial Gas Co. to lay down mains or pipes in accordance with the provisions of the Metropolis Gas Act, 1860, the Board of Trade may authorise them to be laid down without such consent. *Ib.* sec. 54, *post*, vol. ii. tit. "*Gas*."

(*c*) **Penalty.** As to recovery of the penalty, see sec. 227, *post*. Taking up the pavement and digging trenches in a public thoroughfare in order to lay service pipes from gas mains to private houses, are not justifiable at common law as acts done in the exercise of the right of every occupier to make such temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property. The householder who authorises such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. *Reg.* v. *Longton Gas Co.*, 2 E. & E. 651; 29 L. J. M. C. 118.

(*d*) **Breaking open streets.** For further provisions regulating the breaking open and filling in of streets, see the Met. Man. Amend. Act, 1862, sec. 82, and the Metropolitan Paving Act, 1817, secs. 15—23, *post*, pp. 496—501.

For special provisions relating to the laying and repairing of gas pipes, see the Gas-

18 & 19 Vict. c. 120.

Streets not to be broken up, except under the superintendence of vestry or board.

Streets broken up to be reinstated without delay

110. Whenever it is necessary, from any cause whatever, for any company or person to break up or open the pavement, surface, or soil of any street, such street, and the pavement, surface, and soil thereof, shall be broken up and opened under the superintendence of the vestry or district board of the parish or district in which the same is situate, and in such manner, and as regards gas companies at such time, as they shall direct; and such company or person shall with all convenient speed complete the work on account of which the same is broken up or opened, and fill in the ground and make good the pavement or surface or soil so broken up or opened (*e*), and carry away the rubbish occasioned thereby, and shall in the meantime cause the place where such pavement or surface or soil is so broken up or opened to be fenced and guarded, and shall set up and maintain upon or against the part of the pavement, surface, or soil so broken up or opened a sufficient light during every night that such pavement or surface or soil is continued open or broken up.

Penalty on persons taking up pavements, neglecting to reinstate them, and to place lights during the night-time to prevent accidents.

111. If any company or person authorised to break up or open any of the pavement or surface of any street, for the purpose of laying, altering, or repairing any gas, water, or other pipe, or other lawful cause, do not with due diligence cause the ground to be filled in, and the pavement to be reinstated, and the surface to be made good, in a proper and substantial manner, or do not in the meantime fence and guard the same, and affix and maintain lights during the night near to the places where any ground is open, so as to prevent any accident, every such company or other person so offending shall for every such offence forfeit a sum not exceeding five pounds, and also a further sum not exceeding forty shillings (*f*) for every day during which such offence continues; and no such pavement shall be considered to have been reinstated in a proper and substantial manner by any such company or other person unless the same have been reinstated with the same or similar materials of the like quality and thickness, and cemented and bound together in the same or in an equally substantial manner, as those of which it was composed, in such manner as is satisfactory to the vestry or board.

Vestry or district board to direct pavements injured by water or gas pipes to be repaired by company.

112. In case any part of the pavement of any street be sunk, broken, injured, or damaged, by reason of the breaking, bursting, or want of repair of any pipe belonging to any water, gas, or other company, it shall be lawful for the vestry or district board of the parish or district in which

works Clauses Act, 1847, secs. 6—12; and the Metropolis Gas Act, 1860, secs. 49, 50, and 54, *post*, vol. ii. tit. "*Gas*;" and of water pipes, see the Waterworks Clauses Act, 1847, secs. 28—34, *post*, vol. ii. tit. "*Water*." As to the breaking up and repairing of streets by tramway companies, see the Tramways Act, 1870, secs. 26—33, *post*, vol. ii. tit. "*Tramways*." As to laying electric lighting wires, see the Electric Lighting Act, 1882, sec. 12 (2), *post*, vol. ii. tit. "*Electric Lighting*."

As to laying pipes in any street where there is a subway belonging to the County Council for the reception of gas, water, and other pipes, see the Metropolitan Subways Act, 1868, and the Lon. Coun. Counc. (Subways) Act, 1893, *post*, vol. ii. tit. "*Subways*."

(*e*) **Reinstatement of streets.** Liability to reinstate broken streets is extended by the Met. Man. Amend. Act, 1862, sec. 82, *post*, to such parts of the streets contiguous to the part broken up as may have been affected.

The company or person will be liable for an accident caused by the subsequent sinking of the part broken open, if there was negligence in filling it in (*Gray* v. *Bullen*, 5 B. & S. 970; 34 L. J. Q. B. 265; *Goodson* v. *Sunbury Gas Consumers' Co.*, 75 L. T. (N. S.) 251); even though a contractor was employed to do the work. *Gray* v. *Bullen*, *supra*. But in the absence of negligence they will not be liable. *Hyams* v. *Webster* L. R. 4 Q. B. 138; 38 L. J. Q. B. 21.

(*f*) **Recovery of penalties.** See sec. 227, *post*.

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such pavement is situate, if they deem it expedient so to do, to cause notice to be given to the company to whom such pipe is supposed to belong forthwith well and sufficiently to repair and make good such pavement; and if the company to whom such notice is given do not, within forty-eight hours next after such notice, take up such pavement, and well and sufficiently repair and amend such pipe, and cause the ground to be well and sufficiently filled in and rammed down, and the said pavement to be relaid and repaired, to the satisfaction of the vestry or district board, then such company so offending shall for every such offence forfeit and pay any sum not exceeding twenty pounds (*g*).

Company opening the ground to repair a pipe discovered to belong to another company, to give notice to such company, and to be reimbursed expenses.

113. Provided always, that in case it be discovered, after any pavement in any street has been taken up by any company, and the ground opened, that the pipe beneath the surface of such pavement required to be repaired and amended does not belong to the company to whom such notice has been given as aforesaid, but to some other company, then such first-mentioned company to whom such notice has been so given as aforesaid shall, within forty-eight hours after such discovery, cause a copy of such notice to be in like manner given to the company to whom such pipe belongs, and require them to obey, conform to, and comply with the original notice, instead of the company to whom such original notice was given as aforesaid; and such other company to whom such last-mentioned notice is given as aforesaid shall reimburse and pay, on demand, to the first-mentioned company, the reasonable costs and charges incurred in and about the taking up of the pavement and opening the ground; and the said last-mentioned company shall obey, conform to, and comply with the said original notice, and execute and perform the work mentioned therein, in such and the same manner, and within such and the same time, in all respects, as if the said original notice had been given to such last-mentioned company, and they shall be liable to and shall incur the same penalties and forfeitures, on neglect so to do, as they would have incurred and been liable to if the said original notice had been given to them in manner before directed with respect to such first-mentioned company; and if the company by whom such pavement has been first taken up, and who have opened the ground, neglect to give the notice hereby required to the company to whom such pipe actually belongs, such company so neglecting shall for every such offence forfeit and pay any sum not exceeding twenty pounds (*g*).

Power to vestry or district board to reinstate pavement, and charge the expenses to the parties.

114. Provided also, that whenever the permanent surface or soil of any street is broken up or opened, it shall be lawful for the vestry or district board of the parish or district in which the same is situate, in case they think it expedient so to do, to fill in the ground and to make good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company or person by whom such surface or soil is broken up or opened; and the expenses of filling in such ground and of making good the pavement or soil so broken up or opened shall be repaid, on demand, to the vestry or board by such company or person.

Power for vestry or district board to contract with company for restoring pavements.

115. It shall be lawful for the vestry or district board of any parish or district to contract and agree, for any term of years or otherwise, with the several companies or persons authorised to take up any of the pavements

(*g*) **Recovery of penalties.** See sec. 227, *post*.

or other formed surface of any of the streets within such parish or district, for the filling in, paving, and restoring of such parts of the said streets as may be from time to time required to be taken up for the purpose of laying, altering, or repairing any pipes or other like purpose. 18 & 19 Vict. c. 120.

116. Every vestry and district board shall have full power and authority to cause all or any of the streets in their parish or district to be watered as often as they think fit (*h*) . . . As to the watering of streets.

117. [*Footways to be cleansed. Rep. and replaced by Pub. Hlth. (London) Act*, 1891, *secs.* 29 *and* 142, *post.*]

118. It shall be lawful for every vestry and district board to appoint and pay, or for two or more vestries and district boards to unite, when necessary, in appointing and paying, suitable persons to cleanse and sweep, and to keep properly cleansed and swept daily, crossings for passengers over the streets and public thoroughfares within their respective jurisdictions, and in such situations as the said vestries or district boards may from time to time fix and determine, which persons so appointed shall be distinguished by their dress of some distinctive mark as public servants. Vestries and district boards may appoint and pay crossing sweepers.

119. If any porch, shed, projecting window, step, cellar door or window, or steps leading into any cellar or otherwise, lamp, lamp post, lamp iron, sign, sign post, sign iron, showboard, window shutter, wall, gate, fence, or opening, or any other projection (*i*) or obstruction (*k*) placed or made against or in front of any house or building after the commencement of this Act, shall be an annoyance (*l*), in consequence of the same projecting into or being made in or endangering or rendering less commodious the passage along any street in their parish or district, it shall be lawful for Owners, &c., to remove future projections, on notice from vestry or district board.

(*h*) **Section 116.** The remainder of this section is repealed and replaced by the Pub. Hlth. (London) Act, 1891, secs. 51 and 142, *post.*

(*i*) **Projections.** This section impliedly repeals sec. 72 of the Metropolitan Paving Act, 1817, *post*, p. 504, which contains provisions as to encroachments and projections. *Fortescue* v. *St. Matthew, Bethnal Green* (1891), 2 Q. B. 170 ; 60 L. J. M. C. 172. But it does not repeal sec. 65 of that Act, which deals with annoyances from stalls, baskets, &c. *Wyatt* v. *Gems* (1893), 2 Q. B. 225 ; 62 L. J. M. C. 158.

Certain projections are authorised and regulated by the London Building Act, 1894, sec. 73, *post.* The County Council are empowered to make byelaws for the regulation of lamp signs, or other structures overhanging the public way, by sec. 164 of that Act, *post.*

By the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), sec. 60 (7), a penalty is imposed on any person who shall expose anything for sale "upon or so as to hang over any footway, or on the outside of any house or shop, or who shall set up or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building, so as to cause any annoyance or obstruction in any thoroughfare." Under that section it was held that if the magistrate is satisfied that there is an obstruction, he may refuse to receive evidence that some persons were and others were not incommoded by the projection. *Read* v. *Perrett*, 1 Ex. D. 349. It is no defence to show that the practice of exposing goods for sale on the pavement has existed for thirty years, unless it can also be proved that the street was dedicated to the public subject to such obstruction. *Spice* v. *Peacock*, 39 J. P. 581.

(*k*) **Obstruction.** In a public street, between the footway and the carriageway, there was a strip of land which had not been dedicated to the public, and which was used by the adjoining occupants for the purposes of their respective trades. Subject to this use by the occupants, the public had always passed over this strip. A shed, erected on the strip, which did not project over or obstruct the paved footway, was held not to be an obstruction which might be removed within the meaning of this and the 120th sections. *Le Neve* v. *Mile End Old Town Vestry*, 8 E. & B. 1054 ; 27 L. J. Q. B. 208.

(*l*) **Annoyance.** It is not sufficient that there be a projection, but such projection must be an annoyance. *Semble*, whether it is an annoyance is a question of fact for the magistrate. *Gabriel* v. *St. James, Westminster*, 23 J. P. 372. See also *Read* v. *Perrett*, *supra.*

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the vestry or district board to give notice in writing to the owner or occupier of such house or building to remove such projection or obstruction, or to alter the same, in such manner as the vestry or board think fit; and such owner or occupier shall within fourteen days after the service of such notice upon him remove such projection or obstruction, or alter the same in the manner directed by the vestry or board; and if the owner or occupier of any such house or building neglect or refuse, within fourteen days after such notice, to remove such projection or obstruction, or to alter the same, in the manner directed by the vestry or board, he shall forfeit any sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such projection or obstruction continues after the expiration of such fourteen days from the time when he may be convicted of any offence contrary to the provisions hereof.

Penalty for neglect.

Vestry or district board may remove existing projections, and make compensation for the same.

120. It shall be lawful for every vestry and district board, if any projection or obstruction which has been placed or made against or in front of any house or building in any such street before the commencement of this Act shall be an annoyance as aforesaid, to cause the same to be removed or altered as they think fit: Provided always, that the vestry or board shall give notice in writing of such intended removal or alteration to the owner or occupier against or in front of whose house or building such projection or obstruction shall be, seven days before such removal or alteration shall be commenced, and shall make reasonable compensation to every person who shall incur any loss or damage by such removal, excepting in cases where the obstruction or projection may now be removable under any Act, in which no compensation shall be made.

Hoards to be erected during repairs.

121. Every person who shall build or begin to build, or to take down or begin to take down, any house, building, or wall, or alter or repair, or begin to alter or repair, the outward part of any house, building, or wall, shall, in all cases in which the footway is thereby obstructed or rendered inconvenient, cause to be put up a proper and sufficient hoard or fence, with a convenient platform and handrail, if there be room enough for the same, to serve as a footway for passengers outside of such hoard or fence, and shall continue such hoard or fence, in such cases as aforesaid, with such platform and handrail, standing and in good condition, to the satisfaction of the vestry or district board of the parish or district in which such house, building, or wall is situate, during such time as may be necessary for the public safety or convenience, and shall, in all cases in which the same is necessary to prevent accidents, cause such hoard or fence to be well lighted during the night; and every such person who fails to put up such hoard or fence and such platform, with such handrail as aforesaid, or who does not, whilst the said hoard or fence is standing, keep the same well lighted during the night, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings for every day during the continuance of such default (*m*).

Penalty on not erecting hoards.

(*m*) **Hoards.** The London Council (Genl. Powers) Act, 1890 (53 & 54 Vict. ch. ccxliii.), sec. 32, enacts that:—"Every person who shall intend to build or take down any house, building, or wall (not being within the City of London) within ten feet of any public thoroughfare, shall give notice of such intention to the vestry or district board of the parish or district in which such house, building, or wall is situate, and shall, before commencing to build or take down any such house, building, or wall, cause to be put up such hoard or fence with a convenient platform and handrail (if there be room enough) for the same to serve as a footway for passengers, outside of

122. It shall not be lawful for any person to erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence (*n*) in writing first had and obtained from the clerk or

18 & 19 Vict. c. 120.

No hoard to be erected without licence from vestry or district board.

such hoard or fence, as the vestry or district board may think to be proper and sufficient, and shall continue such hoard or fence and such platform and handrail standing and in good condition to the satisfaction of the vestry or district board during the building or taking down of any such house, building, or wall, unless the vestry or district board shall give their consent in writing to its previous removal, and shall, when required so to do by the vestry or district board, cause such hoard or fence and such platform and handrail to be well lighted from sunset to sunrise :

"Every person who fails to give such notice to the vestry or district board, or who commences to build or take down any such house, building, or wall without causing to be put up such hoard or fence, with or without such convenient platform and handrail, or who does not continue such hoard or fence with or without such convenient platform and handrail in good condition to the satisfaction of the vestry or district board as aforesaid, or who does not, when required so to do, cause such hoard or fence with or without such platform and handrail to be well lighted from sunset to sunrise, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day on which such offence shall continue after conviction thereof, such penalties to be recovered by summary proceeding."

The London Building Act, 1894, sec. 90 (2), *post*, requires building owners, when, in the exercise of their rights under part viii. of that Act, they lay open any land or building, to make and maintain a proper hoarding and shoring for the protection of the adjoining land or building.

(*n*) **Hoards to be licensed.** For further provisions against the erection of hoards, scaffolding, &c., without a licence, see the Metropolitan Paving Act, 1817, sec. 75, *post*, p. 509. In the City no hoard, fence, or scaffold must be erected without a licence from the Commissioners of Sewers. City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), sec. 162.

"Where, under any power vested in them by any local or general Act, any . . . board, vestry, . . . or other authority shall grant a licence for the temporary erection of any hoard, gantry, scaffold or other structure, upon or over any part of any public highway, or upon or over any lands or hereditaments the property of such . . . board, vestry, . . . or other authority, such . . . board, vestry, . . . or other authority may include in such licence a condition or conditions prohibiting the affixing of any advertisement to any such hoard, gantry, scaffold or other structure, or sanctioning the affixing of advertisements thereto, upon payment of such sum and on such conditions as the . . . board, vestry, . . . or other authority granting the licence may determine. And any person using any such hoard, gantry, scaffold or other structure otherwise than as permitted by such licence shall for every offence be liable to a penalty not exceeding five pounds, and a further sum not exceeding forty shillings for every day during which such offence shall be continued after notice in writing to discontinue such use shall have been given to such person by such . . . board, vestry, . . . or other authority, which penalties may be recovered in a summary way by such . . . vestry, board, . . . or other authority.

"The amount of any payments received or penalties recovered under this section shall be applied by the . . . board, vestry, . . . or other authority receiving the same in aid of the rate levied for the repair of the highway." Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27), sec. 5.

The court will not issue a *mandamus* to compel a vestry to grant a licence for a hoarding where the applicant has, after their refusal, taken the matter into his own hands, and erected a hoarding without their licence. *Reg.* v. *St. Leonard, Shoreditch*, 20 J. P. 404. *Quære* whether the granting of a licence is not a matter which is entirely in the discretion of the vestry, so that if they, in good faith, determine what ought to be done in respect of such a licence, the Court could not interfere. *Ib.* Under the City of London Sewers Act, 1848, sec. 162, it was held that the commissioners had no power to annex a condition that no placards should be placed on the hoardings, nor to require four licences for a hoarding extending into four streets, nor to limit the duration of the licence. *Reg.* v. *Commissioners of Sewers of the City of London*, 22 L. T. (N. S.) 582. Under the Metropolitan Paving Act, 1817, sec. 75, *post*, p. 509, a licence to erect a hoarding, &c., on the footway of No. 14 P. street was held not to authorise the licence to erect one in N. street, although it ran along another side of the same house. *Darcy* v. *Warne*, 14 M. & W. 199.

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surveyor of the vestry or district board of the parish or district in which such street is situate; and every such licence shall state the place where and the purpose for which such hoard or fence, scaffold or inclosure, is to be set up or made, and the size thereof, and the time for which it is to be permitted to continue.

If hoard be erected or materials be deposited in any manner otherwise than to the satisfaction of the vestry or district board, the same may be removed.

123. If any person erect or set up in any street any hoard or fence or scaffold for any purpose whatever, or any posts, bars, rails, boards, or other things by way of inclosure, for the purpose of making mortar, or of depositing bricks, lime, rubbish, or other materials, without a licence from the vestry or district board, or do any such act as aforesaid in any other manner than as permitted by such licence, or continue the same beyond the time stated in such licence, or fail to keep any hoard, fence, platform, or handrail in good repair, he shall for every such offence forfeit a sum not exceeding five pounds, and a further sum not exceeding forty shillings (*o*) for every day during the continuance of such offence; and it shall be lawful for the vestry or board to cause such hoard, fence, scaffold, or inclosure to be pulled down, and the materials thereof, and also all the bricks, mortar, lime, or other building materials, or other matters or things contained within any such inclosure, to be removed, and deposited in such place as the vestry or board may think fit, and to be kept until the charges of pulling down and removing the same be paid to the vestry or board; and in case the same be not claimed and the said charges paid within the space of eight days next after such seizure thereof, it shall be lawful for the vestry or board to order the same to be sold, and by and out of the proceeds of such sale to pay such charges, rendering any surplus to the owner or other person by law entitled thereto; and in case the proceeds of such sale be insufficient to cover such charges, and the charges of selling and disposing of such materials, matters, and things, the deficiency shall be repaid by the owner of such materials, matters, and things to the vestry or district board, on demand.

Providing against accidents in laying out new streets, &c.

124. Every person laying out or opening any new street, or building therein, shall, during the operations necessary for forming such new street, or for building therein, take all such precautions for guarding against injury to the passengers along such street as may be directed by the vestry or district board of the parish or district within which such operations are being carried on; and if any person fail to comply with the directions of such vestry or district board, within such time as may be limited by them, such vestry or district board may do whatever may be necessary for carrying the same into effect, and the expenses thereby incurred shall be repaid to such vestry or district board by the person laying out or opening such new street, or building therein, as aforesaid, and shall be recoverable by them from such person in manner provided by this Act.

125—129. [*Employment of scavengers and collection of refuse. Rep. and replaced by the Pub. Hlth. (London) Act*, 1891, *secs.* 29—33, 116, *and* 142, *post.*]

Vestries and district boards to cause streets to be lighted.

130. Every vestry and district board shall cause the several streets within their parish or district to be well and sufficiently lighted, and for that purpose shall maintain, or set up and maintain, a sufficient number

(*o*) **Recovery of penalty.** See sec. 227, *post.*

of lamps in every such street, and shall cause the same to be lighted with gas or otherwise, and to continue lighted at and during such times as such vestry or board may think fit, necessary, or proper (*p*); and all public lamps, and the lamp posts and lamp irons and fittings thereof, to be provided by any vestry or district board, shall vest in such vestry or board. 18 & 19 Vict. c. 120.

131. [*Licensing of slaughterhouses. Rep. and replaced by the Pub. Hlth. (London) Act*, 1891, *secs.* 92 *and* 142, *post.*]

132—134. [*Medical officers of health, inspectors of nuisances, &c. Rep. and replaced by the Pub. Hlth. (London) Act*, 1891, *secs.* 99, 106—108, 139, *and* 142, *post.*]

Duties and Powers of Metropolitan Board of Works (q).

135. The sewers mentioned in schedule (D.) to this Act, being the main sewers now vested in the commissioners of sewers of the City of London (*r*), and in the metropolitan commissioners of sewers (*s*) respectively, with the walls, defences, banks, outlets, sluices, flaps, penstocks, gullies, grates, works, and things thereunto belonging, and the materials thereof, with all rights of way and passage used and enjoyed by such commissioners respectively over and to such sewers, works and things, and all other rights concerning or incident to such sewers (*t*), works, and things, shall be vested (*u*) in the *Metropolitan Board of Works* (*q*), and such *Board* shall make such sewers and works as they may think necessary (*x*) for Main sewers vested in the county council and power to such council to make sewers.

(*p*) **Streets to be lighted.** An imperative duty is cast upon the vestries and district boards to light the "streets" within the meaning of sec. 250, *post*, in their respective parishes; and this duty may be enforced by *mandamus*. But they are not bound to light a road which does not come within the reasonable limits of "street," as defined by that section. *Reg.* v. *St. Mary, Islington*, E. B. & E. 743; 22 J. P. 383. A *mandamus* was granted to compel a vestry to light one half of Vauxhall Bridge which was within their parish. *Reg.* v. *St. Mary, Lambeth*, 31 L. J. Q. B. 252; 25 J. P. 374. Where a vestry turned out some of the lights before daylight, it was held that they were not liable for an accident which occurred in consequence. *Young* v. *St. Mary, Islington*, 60 J. P. 821. The gas companies may be required by the local authority to light the public lamps in all streets. Metropolis Gas Act, 1860, sec. 22, *post*, vol. ii. tit. "*Gas.*"

(*q*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. Other powers are conferred, and duties imposed, on the London County Council by that Act, and by numerous other enactments set out or referred to in these volumes.

(*r*) **Commissioners of Sewers of the City.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.

(*s*) **Metropolitan Commissioners of Sewers.** See note to sec. 145, *post*.

(*t*) **Rights incident to sewers.** Where a sewer of the Met. Bd. Wks. was deprived of its lateral support less than twenty years after it was made, it was held that the Board had acquired no right to lateral support from the adjacent land. *Met. Bd. Wks.* v. *Met. Ry. Co.*, L. R. 3 C. P. 612; 38 L. J. C. P. 172. This case was distinguished in *Dudley Corporation, In re*, 8 Q. B. D. 86; 51 L. J. Q. B. 121, where it was held under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), that a right to the subjacent support of a sewer was implied though not expressly given by the statute.

(*u*) **Vesting of sewers.** As to the vesting of sewers, other than main sewers, see sec. 68, *ante*; and see note thereto as to what property and rights are conferred on the local authorities by the vesting clause.

(*x*) **As they think necessary.** Where the Legislature authorises local authorities to execute works, it constitutes them, in the absence of language to the contrary, the sole judges as to the necessity of such works, provided only that they act *bonâ fide* (*Stroud* v. *Wandsworth Bd. Wks.* (1894), 1 Q. B. 64, and cases there cited; affirmed (1894), 2 Q. B. 1; 63 L. J. M. C. 88); and they are also the judges of the direction which the works shall take. *Derby* (*Earl of*) v. *Bury Commissioners*, L. R. 4 Ex. 222; 38 L. J. Ex. 100. See also *Sutton* v. *Norwich* (*Mayor, &c., of*), *post*, p. 165.

18 & 19 Vict. c. 120.

preventing all or any part of the sewage (*y*) within the Metropolis from flowing or passing into the River Thames in or near the Metropolis (*z*), . . . (*a*), and shall also make all such other sewers and works, and such diversions or alterations of any existing sewers or works vested in them under this Act, as they may from time to time think necessary for the effectual sewerage and drainage of the Metropolis, and shall discontinue, close up, or destroy such sewers for the time being vested in them under this Act as they may deem unnecessary, and such *Board* shall from time to time repair and maintain the sewers so vested in them, or such of them as may not be discontinued, closed up, or destroyed as aforesaid; and for the purposes aforesaid such *Board* shall have full power and authority to carry any such sewers or works through, across, or under any turnpike road (*b*), or any street (*c*), or place laid out as or intended for a street, as well beyond as within the limits of the Metropolis, or through or under any cellar or vault under the carriageway or pavement of any street, and into, through, or under (*d*) any lands whatsoever (*e*) within or beyond the said limits, making compensation (*f*)

(*y*) **Sewage.** See Met. Man. Amend. Act, 1858, *post*, for definition of "sewage."

(*z*) **In or near the Metropolis.** By the Met. Man. Amend. Act, 1858, sec. 1, *post*, the Met. Bd. Wks. were required to execute the necessary sewers and works "for preventing, as far as may be practicable, the sewage of the Metropolis from passing into the River Thames *within* the Metropolis."

(*a*) **Section 135.** The omitted words provided for the completion of the works by December 31st, 1860, and were repealed by the Met. Bd. Wks. (Loans) Act, 1869, sec. 50, *post*, vol. ii. tit. "*Loans*."

(*b*) **Turnpike roads** no longer exist in the Metropolis. See Loc. Govt. Act, 1888, sec. 11 (1), and note thereto, *ante*.

(*c*) **Street** is defined by sec. 250, *post*. The County Council are empowered to stop up streets, &c., during the execution of such works. Met. Man. Amend. Act, 1862, sec. 21, *post*.

(*d*) **Into, through, or under.** These words were held, under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), to authorise the construction of a sewer through private property partly under and partly above the surface. *Roderick* v. *Aston Local Board*, *infra*.

(*e*) **Any lands whatsoever.** No works upon the bed or shore of the Thames, which may interfere with the navigation, may be commenced without the previous consent of the Admiralty and of the Conservators. Met. Man. Amend. Act, 1858, secs. 2, 27, and 28, *post*. Works under or over the River Lea must be made subject to the regulations provided by sec. 30 of the same Act. Before commencing any work, which will affect any railway or canal, notice, together with a plan, must be given to the owning company. Met. Man. Act, 1862, sec. 34, *post*. And the level of any railway or canal must not be altered without the consent of the owing company. *Ib.* sec. 35. As to the necessity of purchasing the land, see note (*f*), *infra*.

(*f*) **Compensation.** It is not necessary that the land, or an easement in it, should be purchased for the purpose of exercising the powers conferred by this section, which is not restricted by secs. 150—152, *post*, enabling the county council to purchase land, or any easement in land, which they may deem necessary or expedient for the formation or protection of their works. *North London Rly. Co.* v. *Met. Bd. Wks.*, 28 L. J. Ch. 909; 23 J. P. 515; *Hughes* v. *Met. Bd. Wks.*, 9 W. R. 517; 4 L. T. (N. S.) 318; and see *Thornton* v. *Nutter*, 31 J. P. 419. In a case under sec. 16 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), Jessel, M. R., said, "If what is done is equivalent to taking the whole of the land, the plaintiffs will get compensation for the whole of the land. If what is left is worth nothing then the plaintiffs will get the full value. If what is left is worth anything, then they will get paid so much less, and may sell what is left." *Roderick* v. *Aston Loc. Bd.*, 5 Ch. D. 328, at p. 332; 46 L. J. Ch. 802. Under sec. 45 of the Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), it was held that a manhole was part of a sewer, and could be made without purchasing the land for the purpose, and that the owner was only entitled to compensation for the damage arising from making it. *Swanston* v. *Twickenham Loc. Bd.*, 11 Ch. D. 838; 48 L. J. Ch. 623.

It is not a condition precedent to the right to enter on lands for the purpose of executing such works, that the damage should be ascertained, or that compensation should be made or tendered. *Peters* v. *Clarson*, 7 M. & G. 548; 13 L. J. M. C. 153; *Lister* v. *Lobley*, 7 Ad. & E. 124; *North London Rly. Co.* v. *Met. Bd. Wks.*, *supra*;

for any damage done thereby as hereinafter provided (*g*), and all sewers and works from time to time made by the said *Board* shall vest in them; and the said *Board* shall cause the sewers vested in them to be constructed, covered, and kept so as not to be a nuisance (*h*) or injurious to health, and

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Pettiward v. *Met. Bd. Wks.*, 19 C. B. (N. S.) 489; 34 L. J. C. P. 301; *Macey* v. *Met. Bd. Wks.*, 33 L. J. Ch. 377; 10 L. T. (N. S.) 66. Where the existence of the liability to make compensation was not known at the time the land was taken by the Metropolitan Commissioners of Sewers for the construction of a sewer, it was held that the compensation could be recovered from the Met. Bd. Wks., although no claim for compensation was made for several years after the determination of the powers of the commissioners. *Pettiward* v. *Met. Bd. Wks.*, *supra*.

Where in the course of making a sewer the Met. Bd. Wks. cut through two beds of gravel, the effect of which was to drain the springs in the gravel, and to prevent them from finding their way into a rivulet and some ponds on neighbouring land, it was held, on the authority of *Chasemore* v. *Richards* (7 H. L. Cas. 349; 29 L. J. Ex. 81), that the Board were not liable at common law, and that, therefore, compensation could not be recovered under this section. *Reg.* v. *Met. Bd. Wks.*, 3 B. & S. 710; 32 L. J. Q. B. 105.

But where a local board in the construction of their sewers so affected the adjoining land as to draw off the water flowing in a defined surface channel, it was held that they were liable, and that the person injured was not confined to his remedy under the compensation clause of the Public Health Act, 1848 (11 & 12 Vict. c. 63), sec. 144, but was entitled to an injunction. *Grand Junction Canal Co.* v. *Shugar*, L. R. 6 Ch. App. 483; 24 L. T. (N. S.) 402.

Where, while constructing a sewer, the Met. Bd. Wks. erected a hoarding, which rendered access to the plaintiff's premises less convenient, but no part of such premises was taken, nor did it appear that the hoarding was kept up beyond a reasonable time, it was held that the plaintiff was not entitled to compensation. *Herring* v. *Met. Bd. Wks.*, 19 C. B. (N. S.) 510; 34 L. J. M. C. 224.

See further, on this subject, Cripps on the "Law of Compensation."

(*g*) **As hereinafter provided.** See sec. 225, *post*. The method in that section provided, of ascertaining the amount of compensation, would only apply to damage caused by acts lawfully done under the powers conferred. *Imperial Gas Co.* v. *Broadbent*, 7 H. L. Cas. 600; 26 L. J. Ch. 276; *Cator* v. *Lewisham Bd. Wks.*, and *Att.-Gen.* v. *Hackney Bd. Wks.*, *infra*.

(*h*) **Nuisance.** In the opinion of Vice-Chancellor Wood this section did not authorise the Met. Bd. Wks. to turn the sewage of a district into any navigable stream or river (*Att.-Gen.* v. *Met. Bd. Wks.*, 9 L. T. (N. S.) 139; 27 J. P. 597); nor did it authorise them to cause a nuisance in the execution of their drainage works, unless the nuisance were the necessary result of such execution. *Ib.* But the Met. Man. Amend. Act, 1858, *post*, evidently contemplates an outfall into the Thames below the Metropolis, though not so as to create a nuisance. By sec. 18 of the Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), *post*, nothing in that Act is to extend to affect any outfall or works of the Met. Bd. Wks. (although beyond the Metropolis) executed under the present Act. Secs. 90—108 of the Thames Conservancy Act, 1894, contain provisions for the prevention of the pollution of the Thames and prohibiting sewage from being sent into it, but, by sec. 224 (3), nothing in that Act is to "prejudice, lessen, affect, or interfere with any of the powers, rights, authorities or privileges of the London County Council under any Act now in force."

Nothing in this Act authorises the local authorities to carry sewage into a stream so as to cause a nuisance, and they will be liable to an action for damages, and may be restrained by injunction, if they do so. *Cator* v. *Lewisham Bd. Wks.*, 5 B. & S. 127; 34 L. J. Q. B. 74; *Att.-Gen.* v. *Hackney Dist. Bd.*, L. R. 10 Eq. 626; 44 L. J. Ch. 545.

For cases in which injunctions have been granted to prevent local authorities from polluting streams with sewage, see *Oldacre* v. *Hunt*, 6 De G. M. & G. 376; 1 Jur. (N. S.) 785; *Att.-Gen.* v. *Luton Loc. Bd.*, 2 Jur. (N. S.) 180; 20 J. P. 163; *Bidder* v. *Croydon Loc. Bd.*, 6 L. T. (N. S.) 779; *Fielden* v. *Blackburn Corporation*, W. N. 1866, p. 256; *Att.-Gen.* v. *Birmingham Town Council*, 4 K. & J. 528; 24 L. T. (N. S.) 224; *Goldsmid* v. *Tunbridge Wells Improvement Commissioners*, L. R. 1 Ch. App. 349; 35 L. J. Ch. 382; *Att.-Gen.* v. *Colney Hatch Lunatic Asylum*, L. R. 4 Ch. App. 146; 38 L. J. Ch. 265; *Att.-Gen.* v. *Halifax Corporation*, 39 L. J. Ch. 129; 21 L. T. (N. S.) 52; *North Staffordshire Rly. Co.* v. *Tunstall*, 39 L. J. Ch. 131; *Att.-Gen.* v. *Leeds Corporation*, L. R. 5 Ch. App. 583; 39 L. J. Ch. 711; *Holt* v. *Rochdale Corporation*, L. R. 10 Eq. 354; 39 L. J. Ch. 761; *Att.-Gen.* v. *Basingstoke* (*Mayor, &c., of*), 45 L. J. Ch. 726; 24 W. R. 817.

Where there was no evidence of the actual existence or the immediate probability

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to be properly cleared, cleansed, and emptied (*i*), and for the purpose of

of a nuisance, an injunction was refused, without prejudice, however, to future proceedings in the event of a nuisance subsequently arising. *Att.-Gen.* v. *Kingston-on-Thames*, 34 L. J. Ch. 481 ; 12 L. T. (N. S.) 665. And see *Lillywhite* v. *Trimmer*, 36 L. J. Ch. 525 ; 16 L. T. (N. S.) 318. But though prospective nuisance is not in itself a ground for the interference of the Court, yet if some degree of present nuisance exists, the Court will take into account its probable continuance and increase. *Goldsmid* v. *Tunbridge Wells Commissioners*, *supra*. And where the description of the project for sewerage contained in the notice of a sanitary authority showed that such sewerage would cause a nuisance, an injunction was granted to restrain them from carrying out the project. *Lumacraft* v. *St. Thomas Rural Sanitary Authority*, 42 L. T. (N. S.) 365 ; 44 J. P. 441.

An injunction to restrain a local board from discharging sewage into a river was refused where the plaintiff sustained no material injury, and it appeared that the nuisance had to a great extent abated since the filing of the bill (*ib.*), and also where the injury proved was trifling. *Att.-Gen.* v. *Gee*, L. R. 10 Eq. 131 ; 23 L. T. (N. S.) 299. Where, however, a local board discharged sewage into a river in contravention of the Loc. Govt. Act (1858) Amend. Act, 1861 (24 & 25 Vict. c. 61), sec. 4, an injunction was granted without proof of injury to the public, and though the bill which sought to make out a nuisance was dismissed. *Att.-Gen.* v. *Cockermouth Loc. Bd.*, L. R. 18 Eq. 172 ; 44 L. J. Ch. 118.

A highway board was restrained from allowing any fresh communications to be made with a sewer constructed by their predecessors in office, which caused a nuisance to the inhabitants of the adjoining parish by draining into a stream flowing through such parish, although, from the limited nature of their powers, no order could be made against the board to compel them to abate the nuisance altogether by stopping up the sewer and ceasing to drain into the stream. *Att.-Gen.* v. *Richmond*, L. R. 2 Eq. 306 ; 35 L. J. Ch. 597.

If a local authority disregard an injunction to restrain them from allowing sewage to flow into a stream, the Court will order a sequestration to issue. *Spokes* v. *Banbury Loc. Bd.*, L. R. 1 Eq. 42 ; 35 L. J. Ch. 105. See also *Goldsmid* v. *Tunbridge Wells Commissioners*, W. N. (1872), p. 63 ; *Sutton* v. *Barnet Loc. Bd.*, W. N. (1877), p. 167 ; *Att.-Gen.* v. *Walthamstow*, W. N. (1878), p. 90 ; *Selous* v. *Croydon Loc. Bd.*, 53 L. T. (N. S.) 209.

A local authority cannot be proceeded against summarily for a nuisance arising from their sewage works. *Reg.* v. *Parlby*, *post*, p. 278.

In order to maintain an action for any injury or nuisance arising from the overflow or disrepair of a sewer it is necessary to show an absence of reasonable care in the construction, maintenance, or cleansing of the sewer. *Hammond* v. *St. Pancras Vestry*, L. R. 9 C. P. 316 ; 43 L. J. C. P. 157 ; and see cases there cited. This decision was followed in *Bateman* v. *Poplar Dist. Bd.* (No. 2), *post*, p. 212. Where a sewer became choked and overflowed, and the jury found that its existence was unknown to the vestry, though it might have been known to them by the exercise of reasonable care and inquiry, and that the obstruction of the sewer was unknown to them, and could not by the exercise of reasonable care have been known to them, it was held that the vestry were not liable in an action for damages. *Hammond* v. *St. Pancras Vestry*, *supra*. But a district board were held liable for damage arising from the overflow of a sewer caused by their negligence in not keeping a gully clean, whereby it became choked. *Meek* v. *Whitechapel Bd. Wks.*, 2 F. & F. 144. See also *Gordon* v. *St. James'*, *Westminster*, 30 J. P. 24. Where it became necessary to open the flood gates of the main sewer after a heavy rainfall, in order to prevent a large district from being flooded, it was held that the Met. Bd. Wks. were not liable for injury caused thereby, as what had happened was only the inevitable result of what Parliament had authorised them to do. *Dixon* v. *Met. Bd. Wks.*, 7 Q. B. D. 418 ; 50 L. J. Q. B. 772. See also *Green* v. *Chelsea Waterworks Co.*, *post*, vol. ii., p. 1315.

Where a sewer which was insufficient overflowed, it was held that an action for the resulting damage, being for nonfeasance only, would not lie against the local authority under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), the only remedy being that provided by sec. 299 of that Act. *Robinson* v. *Workington* (*Mayor, &c., of*) (1897), 1 Q. B. 619 ; 66 L. J. Q. B. 388.

See also *Blyth* v. *Birmingham Waterworks Co.*, 11 Ex. Rep. 781 ; 25 L. J. Ex. 212 ; *Ruck* v. *Williams*, 27 L. J. Ex. 357 ; *Southampton and Itchin Floating Bridge Co.* v. *Southampton Loc. Bd.*, 8 E. & B. 801 ; 28 L. J. Q. B. 41 ; *Geddis* v. *Bann Reservoir Proprietors*, 30 App. Cas. 430 ; *Dunn* v. *Birmingham Canal Co.*, L. R. 8 Q. B. 42 ; *Stretton's Derby Brewery Co.* v. *Derby* (*Mayor, &c., of*) (1894), 1 Ch. 431 ; 63 L. J. Ch. 135.

(*i*) **Cleared, cleansed, and emptied.** The duty of cleansing every grating and gully in any street communicating with any sewer of the County Council (except in streets

clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works (*k*) as may be necessary, and may cause the sewage and refuse from such sewers to be sold or disposed of as they may see fit, but so as not to create a nuisance, and the money arising thereby shall be applied towards defraying the expenses of such *Board* (*l*). 18 & 19 Vict. c. 120.

136. [*Plans for intercepting sewage. Rep. and replaced by Met. Man. Amend. Act, 1858, post.*]

137. In case it appear to the *Metropolitan Board of Works* (*m*) that any sewers in the Metropolis not hereinbefore vested in such *Board* ought to

County council may declare sewers to be main sewers, and take under their jurisdiction sewerage matters under jurisdiction of vestries and district boards.

vested in and cleansed by the Council), so far as such grating or gully belongs to or is under the control of the Council, is transferred to the vestry of the parish, or the board of works of the district within which the same is situate. Lon. Coun. Counc. (Genl. Powers) Act, 1894, sec. 16, *post*, p. 528. See cases cited in preceding note.

(*k*) **Reservoirs, sluices, &c.** It was held that similar language in sec. 46 of the Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), did not authorise a local board to enter upon land without the consent of the owner, for the purpose of making reservoirs and deposit-beds for retaining sewage. *Sutton* v. *Norwich* (*Mayor, &c., of*), 27 L. J. Ch. 739; 31 L. T. (O. S.) 389. But by sec. 3 of the Met. Man. Amend. Act, 1858, *post*, the compulsory powers of taking land conferred on the Met. Bd. Wks., by secs. 150—156, *post*, for sewerage purposes, are extended to works for deodorising sewage.

(*l*) **Other sewerage and drainage powers.** In addition to the sewerage powers conferred by this section, the County Council may declare any sewers to be main sewers (sec. 137, *post*); may make orders and byelaws for the guidance, direction, and control of vestries and district boards, in the construction, maintenance, &c., of sewers, and for regulating the dimensions, mode of construction, &c., of pipes, drains, and other means of communicating with sewers (secs. 138 and 202, *post*, and Met. Man. Amend. Act, 1862, sec. 83, *post*, p. 259); and may acquire land for the purposes of the present section (secs. 150—156, *post*). They are also empowered to stop up carriage or footways during the construction of sewers, and to take lands for making roads and ways to or in connection with sewers (Met. Man. Amend. Act, 1862, secs. 21 and 22, *post*); and to construct and maintain bridges, culverts, roads, &c., in connection with sewers and works. *Ib.* secs. 24 and 25. No gully or ventilating shaft connected to any main sewer must be removed without the previous consent of the Council. *Ib.* sec. 27. Vestries and district boards are required to submit plans of new sewers to the Council, and obtain their approval before proceeding with them. *Ib.* secs. 45 and 69, *ante*. As to branching sewers and drains, and making openings into main sewers, see *ib.* secs. 46—51, and 61. Before executing any sewerage works beyond the Metropolis, the vestries and district boards must obtain the consent and approval of the Council. *Ib.* sec. 58. As to contributions to the cost of main sewers, see *ib.* sec. 59. For penalties for placing buildings or encroachments on or interfering with sewers, see *ib.* secs. 68 and 69, and sec. 204 of this Act, *post*; and for making sewers contrary to approved plans, or branching any sewer or drain into a main sewer without the previous approval of the Council, see Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), secs. 4 and 8, *post*. As to trespassers in main sewers, see London Coun. Counc. (Genl. Powers) Act, 1890, sec. 39, *post*, p. 52, 6, *n*; and in other sewers, see London Coun. Counc. (Genl. Powers) Act, 1893, sec. 23, *post*, p. 52 6, *n*. The discharge of offensive matter and refuse into sewers is subject to certain restrictions and regulations, and the County Council have power to enter premises for the purpose of examining whether such regulations have been contravened. See Lon. Coun. Counc. (Genl. Powers) Act, 1894, secs. 8—17, *post*, p. 526.

The obligation is also imposed upon the County Council to receive into their main sewers, on terms, the sewage of Hornsey (Hornsey Loc. Bd. Act, 1871 (34 & 35 Vict. ch. cxxix.)); of a portion of Beckenham (Beckenham Sewerage Act, 1873 (36 & 37 Vict. ch. ccxviii.)); of South Hornsey (Met. Bd. Wks. Act, 1874 (37 & 38 Vict. ch. xcvii.), secs. 13—20); of Tottenham (Tottenham and Wood Green Sewerage Act, 1891 (54 & 55 Vict. ch. ccv.)); of West Ham (West Ham Corporation Act, 1893 (56 & 57 Vict. ch. cciv.)); and of a portion of Willesden. Willesden Sewerage Act, 1896 (59 & 60 Vict. ch. ccxlvii.).

The county council and any district board are entitled, on terms, to have a communication made from any metropolitan sewer into the sewer of the West Kent Main Sewerage Board. West Kent Main Sewerage Act, 1875 (38 & 39 Vict. ch. clxiii.), sec. 52.

(*m*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

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be considered main sewers, and to be under their management, it shall be lawful for such *Board*, by an order under their seal, to declare the same to be main sewers, and thereupon the same shall vest in and be under the management of the said *Board;* and it shall also be lawful for the said *Board* by any such order to take under their jurisdiction and authority any other matters in relation to sewerage and to drainage with respect to which jurisdiction or authority is by this Act vested in any vestry or district board.

County council to make orders for controlling vestries and district boards in construction of sewers, &c.

138. The *Metropolitan Board of Works* (*n*) shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the Metropolis, make such general or special order as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, and maintenance and cleansing of sewers in their respective parishes or districts (*o*), and for securing the proper connection and intercommunication (*p*) of the sewers of the several parishes and districts and their communications with the main sewers (*q*) vested in the said *Metropolitan Board* (*n*), and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage; and all such orders shall be binding upon such vestries and boards.

County council may direct appointments to be made for two parishes or districts jointly.

139. The *Metropolitan Board of Works* (*n*), where it appears to them expedient that any officer (*r*) or set of officers necessary for any of the purposes of this Act should act for a larger area than is comprised in one parish or district, or for parts of different parishes or districts, may, with the consent of the vestries or boards of such parishes or districts, direct that such vestries or boards shall unite in the appointment and removal of such officer or set of officers; and the said *Metropolitan Board* (*n*) shall in such case direct the mode in which the respective bodies or committees thereof shall act together for the purposes of every such appointment and removal, and the proportions in which the salary or salaries of such officer or officers shall be borne and paid by every such parish and district respectively.

Or may place a street in different

140. It shall be lawful for the *Metropolitan Board of Works* (*n*), where

(*n*) **Met. Bd. Wks.** See note (*t*) on page 167.

(*o*) **General or special order.** This section does not empower the County Council to take the initiative by ordering specific new sewerage works, but merely gives them a control over the construction and arrangement of new local sewers, the initiative as to which is left to the vestries and district boards. *Reg.* v. *St. George's, Hanover Sq.* (1895), 2 Q. B. 275; 64 L. J. Q. B. 715. The County Council may also make byelaws for the guidance of vestries, &c., in the construction, maintenance, &c., of sewers, and for the other objects contained in the present section. Met. Man. Amend. Act, 1862, sec. 83, *post*.

(*p*) **Intercommunication of sewers.** As to compensation in consideration of communications between sewers in different parishes or districts, see Met. Man. Amend. Act, 1862, sec. 32, *post*.

(*q*) **Communications with main sewers.** For provisions restricting communications with main sewers, see the Met. Man. Amend. Act, 1862, sec. 46, and the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), sec. 4, *post*. As to trespassers in sewers, see the London Coun. Counc. (Genl. Powers) Act, 1890, sec. 39, *post*, p. 526, *n.*; and as to the discharge of solid matter, offensive liquid, refuse, &c., into sewers, see the London Coun. Counc. (Genl. Powers) Act, 1894, secs. 8–17, *post*, p. 526.

(*r*) **Any officer.** The same person cannot be appointed medical officer of health for more than one district without the sanction of the Loc. Govt. Bd. Pub. Hlth. (Lon.) Act, 1891, sec. 106 (2), *post*.

it appears to them that any street or line of street, being in more than one parish or district, should be placed under the exclusive management of one vestry or district board for the purposes of paving, lighting, watering, and cleansing, or any of them, or for the purposes of sewerage and drainage, or for all the purposes of this Act, to order that the same shall be under the management of such vestry or board accordingly (*s*); and it shall also be lawful for the said *Metropolitan Board* (*t*), where it appears to them that any part of any parish or district is so detached or situate that it would be convenient for the purposes of sewerage or drainage that the same should be placed under the management of the vestry or district board of any adjoining parish or district, to order that such part shall, for such purposes, be under the management of such vestry or district board.

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parishes under the management of one vestry, or part of a parish under the management of vestry of adjoining parish.

141. [*Naming of streets and numbering of houses. Rep. by Met. Man. Amend. Act*, 1862, *sec.* 87; *which section is now repealed and replaced by the London Building Act*, 1894, *secs.* 32—38 *and sec.* 215, *post.*]

142. [*Register of alterations in names of streets. Rep. and replaced by London Building Act*, 1894, *secs.* 38 *and* 215, *post.*]

143. [*Building line. Rep. by Met. Man. Amend. Act*, 1862, *sec.* 75; *which section is now repealed and replaced by the London Building Act*, 1894, *secs.* 22 *and* 215, *post.*]

144. The *Metropolitan Board of Works* (*t*) shall have power to make, widen, or improve any streets, roads, or ways (*x*), for facilitating the passage and traffic between different parts of the Metropolis (*y*), or to contribute and join with any persons in any such improvements as aforesaid, and to take, by agreement or by gift, any land, rights in land, or property, for the purposes aforesaid (or otherwise) for the improvement of the Metropolis, on such terms and conditions as they may think fit; and such *Board*, where it appears to them that further powers are required for the purpose of any work for the improvement of the Metropolis or public benefit of the inhabitants thereof, may make applications to Parliament

Power to county council to make improvements.

(*s*) **Streets in more than one parish.** For definition of "street," see sec. 250, *post*, and note thereto. The County Council may also place roadways, footpaths, &c., situate in more than one parish or district under the management of one vestry or district board, and may order in what proportion the costs shall be borne. Met. Man. Amend. Act, 1862, sec. 86, *post*. See also sec. 160 of the present Act, *post*, for other provisions as to defraying the expenses. Where the boundary between two coterminous parishes is a highway, the presumption is that the half of the highway on either side of the *medium filum* belongs to the respective parishes on either side. *Reg.* v. *Strand Dist. Bd.*, 4 B. & S. 526; 33 L. J. M. C. 33.

(*t*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*x*) **Widen or improve streets, &c.** For provisions regulating the formation and widening of streets, see the London Building Act, 1894, part ii., *post*. Vestries and district boards may, with the consent of the County Council, make, extend, widen alter, or improve streets, &c., within their parish or district. Met. Man. Amend. Act, 1862, sec. 72, *post*; and by sec. 73 of the same Act, the powers of improving and regulating streets contained in the Metropolis Paving Act, 1817, *post*, are extended to the whole of the Metropolis.

(*y*) **Metropolis** is defined sec. 250, *post*.

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for that purpose (*z*), and the expenses of such application may be defrayed as other expenses of the said *Board:* (*a*) . . .

145—147. [*Determination of metropolitan commissioners of sewers* (*b*) *Saving for current proceedings and rates. Rep.* 55 *&* 56 *Vict. c.* 19 *(Statute Law Revision).*]

Property vested in metropolitan commissioners of sewers (except sewers transferred to vestries and district boards) transferred to the Metropolitan Board of Works.

148. All property, matters, and things whatsoever vested in the metropolitan commissioners of sewers, except such sewers as are hereby vested in any vestry or district board, and except such sewers as are not within the limits of the parishes and places mentioned in the schedules to this Act, shall be vested in the *Metropolitan Board of Works* (*c*); . . .

Auxiliary Powers common to the Metropolitan Board of Works (*c*) *and to Vestries and District Boards.*

Power to county council, boards and vestries to enter into contracts for carrying Act into execution.

149. The *Metropolitan Board of Works* (*c*), and every district board and vestry, may enter into all such contracts as they may think necessary for carrying this Act into execution; and every such contract for works or materials whereof the value or amount exceeds ten pounds shall be in writing or print, or partly in writing and partly in print, sealed with the seal of the board or vestry (*d*); and every

(*z*) **Applications to Parliament.** By sec. 10 of the Met. Man. Amend. Act, 1856, *post*, this section is declared to extend to authorise applications to Parliament for providing parks, pleasure grounds, and open spaces. Sec. 15 of the Loc. Govt. Act, 1888, *ante*, confers on the county council the same power of *opposing* bills in Parliament, as are conferred on the council of a municipal borough by the Borough Funds Act, 1872, *post*, vol. ii. tit. "*Bills in Parliament.*"

(*a*) **Section 144.** The omitted words required the approval of the Commissioner of Works before the commencement of any works estimated to exceed fifty thousand pounds, and are repealed by the Met. Man. Amend. Act, 1858, sec. 25, *post*.

(*b*) **Metropolitan Commissioners of Sewers.** The Metropolitan Commissioners of Sewers were appointed for the drainage of the Metropolis, and exercised their powers under the Metropolitan Sewers Act, 1848 (11 & 12 Vict. c. 112), as continued and amended by 12 & 13 Vict. c. 93; 14 & 15 Vict. c. 75; 15 & 16 Vict. c. 64; 16 & 17 Vict. c. 125; 17 & 18 Vict. c. 111. These Acts were repealed by 38 & 39 Vict. c. 66 (Stat. Law Rev.). The limits of the jurisdiction of the commissioners were such places, outside the City, in the counties of Middlesex, Surrey, Essex, and Kent, not being more than twelve miles in a straight line from St. Paul's as were from time to time named in the commissions issued. Met. Sewers Act, 1848, sec. 1. They were empowered to form separate sewerage districts or levels within the limits of their jurisdiction (*ib.* sec. 34); and to levy on each district a separate rate, called a "district sewers rate." *Ib.* sec. 76.

(*c*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. The remainder of sec. 148 provided savings for current debts, &c., and is repealed by 55 & 56 Vict. c. 19 (Statute Law Revision).

(*d*) **Contracts to be sealed.** Contracts with corporate bodies, with the proper seal affixed, are in like position to those of private persons; so that where a contract, with their common seal affixed, is sent by a corporation to the other party to the agreement to be signed, or having been first signed by the other party, an alteration is made in its terms by the corporation, which is assented to by the other party, and the corporation seal is subsequently affixed, such contract is valid. *Dartford Union* v. *Trickett*, 59 L. T. (N. S.) 754; 53 J. P. 277.

Where a contractor covenanted with a vestry to supply, when required so to do by the vestry's surveyor, horses, carts, and men, at certain rates, and on certain conditions for a stipulated period, it was held that there was an implied covenant on the part of the vestry to employ that contractor, and no other, for that purpose during the specified time. *Hornsby* v. *St. Luke's, Chelsea*, 2 L. T. (N. S.) 176.

Sec. 174 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), which enacts that "every contract made by an urban authority whereof the value or amount exceeds 50*l.* shall be in writing, and sealed with the common seal of such authority," has been held to be obligatory and not merely directory, and to apply to an executed contract of which the authority have had the full benefit, and which has been effected by their agent

contract so entered into, and duly executed by the other parties thereto, shall be binding on the board or vestry and their successors, and upon all other parties thereto: Provided always, that it shall be lawful for any such board or vestry to compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract or in any bond or otherwise, for such sum of money or other recompense as to the board or vestry may seem proper.

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Power to compound for penalties in respect of breach of contracts.

150. It shall be lawful for the *Metropolitan Board of Works* (*f*) and every district board and vestry to purchase, or to take on lease for such term as they may think fit, any land, or any right or easement in or over any land which they may deem necessary or expedient for the formation or protection of any works which they are authorised to execute under this Act, also any offices and other buildings, yards, stations, or places for deposit of refuse, materials, and things, or any land for the erection and formation of such offices and other buildings, yards, stations, or places for deposit; and also to contract for the purchase, removal, or abatement of

Power to county council, boards and vestries to purchase lands, &c., for the purposes of this Act.

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duly appointed under their common seal; and that, therefore, no action can be maintained on such a contract not under seal, although the works have been executed. *Young* v. *Leamington* (*Mayor, &c., of*), L. R. 8 App. Cas. 517; 52 L. J. Q. B. 713, which contains a collection of previous cases on this point. No relief in equity will be given. *Frend* v. *Dennett*, 5 L. T. (N. S.) 73; *Oxford* (*Mayor, &c., of*) v. *Crow* (1893), 3 Ch. 535; 69 L. T. (N. S.) 228. But an agreement by a local board to compromise an action is not within that section, and is valid, though not under seal, and though the amount in question exceed fifty pounds. *Att.-Gen.* v. *Gaskell*, 22 Ch. D. 537; 52 L. J. Ch. 163. Where a contract under seal for the performance of work on the basis of a certain specification, the latter not being signed nor under seal, was entered into by a local board, it was held that the mere fact of the specification not being signed nor under seal did not release the sureties under the contract from their liability. *Russell* v. *Trickett*, 13 L. T. (N. S.) 280. An agreement to transfer certain lands was held to be invalid, notwithstanding that a petition which recited the agreement, and which the plaintiffs and defendants presented to the Loc. Govt. Bd., was itself under seal. *Tunbridge Wells Improvement Commissioners* v. *Southborough Loc. Bd.*, 60 L. T. (N. S.) 172; 5 T. L. R. 107.

Where a contract was entered into not under seal, and after the contractors had performed part of the work, exceeding in value fifty pounds, the local authority affixed their seal to the contract, Cave, J., held that as part of the work was unperformed when the seal was affixed, there was consideration for affixing it in the contractor's promise to complete the work, and that it was therefore competent for the authority to constitute the contract a good contract under seal in respect of the work already done. *Mellis* v. *Shirley Loc. Bd.*, 14 Q. B. D. 911; 54 L. J. Q. B. 408. This case was reversed by the Court of Appeal on *another point*, 16 Q. B. D. 446; 55 L. J. Q. B. 143. A municipal corporation resolved to pay certain sums, each exceeding fifty pounds, to contractors for street paving work, which had been done without any contract under seal, and the Court, in its discretion, refused a *certiorari* to bring up and quash the resolution, holding that the work was useful and done at a reasonable cost, and that there was no misapplication of the borough funds, and nothing illegal in paying a debt justly due. *Reg.* v. *Norwich* (*Mayor, &c., of*), 30 W. R. 752; 46 J. P. 308. See also *Reg.* v. *Prest*, 16 Q. B. 32.

Sec. 174 of the Pub. Hlth. Act, 1875, applies only to contracts which the parties, at the time of entering into it, contemplate shall exceed the sum of fifty pounds. Where, therefore, a medical man agreed verbally with the committee of a sanitary authority to attend patients during an epidemic, at the rate of 5*s.* 3*d.* per day, and attended until the amount due was nearly 100*l.*, it was held that it was not a contract "whereof the value or amount exceeds 50*l.*," because at the time of entering into it the parties had not ascertained that it would exceed 50*l.* *Eaton* v. *Basker*, 7 Q. B. D. 529; 50 L. J. Q. B. 444.

In an action by a local authority to recover from an adjoining owner his proportion of the cost of sewering, &c., a street, it was held to be no defence that the work, which exceeded fifty pounds, had been done by contractors without any contract under seal. *Bournemouth Commissioners* v. *Watts*, 14 Q. B. D. 87; 54 L. J. Q. B. 93.

(*f*) **Met. Bd. Wks.** See note (*e*) on page 168.

18 & 19 Vict. c. 120.

any milldam, pound, weir, bank, wall, lock, or other obstruction to the flow of water, whereby sewerage or drainage is interrupted or impeded, and for the purchase of any land, or any right or easement in or over any land, which it may be necessary or expedient to purchase to prevent the obstruction of sewerage or drainage; and also to purchase or take on lease as aforesaid the whole or any part of any streams or springs of water, or any rights therein, which it appears to them necessary to acquire and use for the purposes of cleansing sewers and drains (*g*) and the other purposes of this Act, or any land which is deemed by them advisable to purchase or take on lease for the purpose of drawing or obtaining water from springs, or by sinking of wells, and for making and providing reservoirs, tanks, aqueducts, watercourses, and other works, or for any other purpose connected with the works for obtaining such supply of water as aforesaid: Provided always, that nothing herein contained shall authorise the said *Metropolitan Board* (*h*), or any district board or vestry, to use or permit to be used any such works for the purpose of carrying water by supply pipes into any house or factory for domestic (*k*), manufacturing, or commercial purposes.

Certain provisions of 8 & 9 Vict. c. 18 incorporated with this Act.

151. For the purpose of enabling the said *Metropolitan Board* (*h*), and every district board and vestry, to obtain any land, or any right or easement in or over any land (*l*), which they respectively may require for the purposes of this Act, "The Lands Clauses Consolidation Act, 1845" (*m*), except the provisions of that Act with respect to the recovery of forfeitures, penalties, and costs, shall, subject to the provisions herein contained, be incorporated with this Act; and the provisions of the said Act so incorporated with this Act which would be applicable in the case of a purchase of any land shall be applicable in the case of the purchase of a right or easement in or over any land; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean the *Metropolitan Board* (*h*),

(*g*) **Cleansing sewers.** As to the use of fire hydrants for flushing purposes, see the London Coun. Counc. (General Powers) Act, 1894, sec. 4, cited under sec. 34 (1) of the Metropolis Water Act, 1871, *post*, vol. ii. tit. "*Water*."

(*h*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*k*) **Domestic purposes.** See the West Middlesex Waterworks Act, 1852, sec. 42, and notes thereto, *post*, vol. ii. tit. "*Water*."

(*l*) **Right or easement.** It is not necessary that the land or any easement in it should be purchased for the purpose of constructing sewers. See secs. 69 and 135, *ante*, and notes thereto. Under the Thames Embankment Act, 1862, the Met. Bd. Wks. filled up the river in front of the wharf, thus interfering with the access to it; and it was held that they were not taking an easement or interest in lands, but were merely injuriously affecting the rights of the owner, for which he was entitled to compensation only. *Marcy* v. *Met. Bd. Wks.*, 33 L. J. Ch. 377; 10 L. T. (N. S.) 66. Where, under the same Act, the Metropolitan Board altered and diverted a pier temporarily, yet so as not to interrupt its use, and proposed eventually to build, as nearly as possible at the same spot, a new pier in place of the old one, it was decided that the Board were not taking or permanently using any land or easement of the pier company. *Temple Pier Co.* v. *Met. Bd. Wks.*, 34 L. J. Ch. 262; 12 L. T. (N. S.) 369. See further as to the distinction between the acquirement of a right or easement in or over land, and a mere injury to rights connected with land. *Bush* v. *Trowbridge Waterworks Co.*, 19 Eq. 291; 44 L. J. Ch. 645; *Wigram* v. *Fryer*, 36 Ch. D. 87; 56 L. J. Ch. 698; *London School Bd.* v. *Smith*, W. N. (1895), 37.

(*m*) **Lands Clauses Act, 1845.** As to this Act, see Cripps on the "Law of Compensation," and other treatises on the same subject, which is too long to be dealt with in this work.

or the district board or vestry, acting under the provisions of the said Act and this Act, as the case may be. 18 & 19 Vict. c. 120.

Lands not to be taken compulsorily, except by county council with consent of Secretary of State.

152. Provided always, that the provisions of the said Lands Clauses Consolidation Act (*n*) "with respect to the purchase and taking of lands otherwise than by agreement" (*o*), shall not be incorporated with this Act, save for enabling the *Metropolitan Board of Works* (*p*) to take land, or any right or easement in or over land (*q*), for the purpose of making any sewers or works for preventing the sewage or any part of the sewage within the Metropolis from passing into the Thames in or near the Metropolis, or otherwise for the purpose of the sewerage or drainage of the Metropolis (*r*); Provided also, that no land, or right or easement in or over land, for the purposes aforesaid, shall be taken compulsorily by the said *Board*, without the previous consent in writing of one of Her Majesty's principal Secretaries of State.

Previous notice to be given.

153. The *Metropolitan Board of Works* (*p*), before applying for the consent of the Secretary of State for taking land, or any right or easement in or over land, compulsorily, as aforesaid, shall publish, once at the least in each of four consecutive weeks, in one of the daily newspapers published in the Metropolis, an advertisement describing the nature of the works in respect of which the land, right or easement, is proposed to be taken, naming a place where a plan of the proposed works is open for inspection at all reasonable hours, and stating the quantity of land or the particulars of the right or easement that they require for the purpose of such works, and shall serve a notice on the owners or reputed owners, lessees or reputed lessees, and occupiers of the land intended to be taken, or of the land in or over which such right or easement is intended to be taken, such service to be made four weeks previously to the application to such Secretary of State, and such notice shall state the particulars of the land, right, or easement so required, and that the *Metropolitan Board* (*p*) are willing to treat for the purchase thereof (*s*), and as to the compensa-

(*n*) **Lands Clauses Act, 1845.** See note (*m*) on page 170.

(*o*) **Otherwise than by agreement.** These words exclude secs. 16—68 of the Lands Clauses Consolidation Act, 1845. See *Ferrar* v. *City of London Commissioners of Sewers*, L. R. 4 Ex. 227; 38 L. J. Ex. 102. The power of compulsory purchase of buildings, lands, &c., for the purpose of altering, widening, or extending streets and public places, is possessed by vestries and district boards under the Metropolitan Paving Act, 1817, secs. 80—82, *post*, p. 510.

(*p*) **Met. Bd. Wks.** See note (*h*) on page 170.

(*q*) **Right or easement.** See note (*l*) on page 170.

(*r*) **Sewerage works.** The compulsory powers of taking land here conferred are extended to works for deodorising sewage, by the Met. Man. Amend. Act, 1858, sec. 3, *post*; and to roads or ways to or in connection with sewers or works vested in the County Council, by the Met. Man. Amend. Act, 1862, sec. 22, *post*.

(*s*) **Notice to treat.** The advertisement, plan, and notice required by this section are in substitution for the notice required by sec. 18 of the Lands Clauses Act, 1845 (8 Vict. c. 18). For directions as to service of the notice, see *ib.* sec. 19; and as to service on a corporation aggregate, see *ib.* sec. 20.

No particular form of words is required, but it is usual, in serving notices under sec. 18 of the Lands Clauses Consolidation Act, 1845, to accompany the notice with a diagram or plan showing the scale of admeasurement. Such a scale, however, is unnecessary, provided the notice accurately defines the quantity and position of the land proposed to be taken. *Sims* v. *Commercial Railway Co.*, 1 Rail. Cas. 431. The following common form is given in *Dowling* v. *Pontypool Railway Co.*, L. R. 18 Eq. 714, at p. 745:—"The lands of which the particulars are contained in the schedule hereto, with the appurtenances, and which said lands are for the better description thereof delineated on the plan attached hereto or delivered therewith, and are therein distinguished by a red colour." In that case the deposited plans and books of

18 & 19 Vict. c. 120.

tion (*t*) to be made for the damage that may be sustained by reason of the proposed works.

Power to dispose of lands or property not wanted.

154. The *Metropolitan Board of Works* (*u*), and any district board or vestry, may sell and dispose of any land purchased by them under this Act (*x*), and any property whatsoever vested in them under this Act, which it may appear to them may be properly sold or disposed of; and for completing and carrying any such sale of any land into effect such board may make and execute a conveyance of the land sold and disposed of as aforesaid unto the purchaser, or as he shall direct, and such conveyance shall be under the seal of the said board or vestry; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking (*y*); and a receipt under the seal of the said board or vestry shall be a sufficient discharge to the purchaser of any such land or any other such property as aforesaid for the purchase money in such receipt expressed to be received; and the money arising from such sale of any land purchased under this Act, and (except as hereinafter otherwise provided) of any such property, shall be applied in aid of the rate out of which the expenses of the purchase of such land or providing such property have been or are authorised to be defrayed under this Act; and the money arising from the sale of any property vested in any such board or vestry under this Act, and which,

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reference showed a small plot, No. 38, nearly surrounded by a large plot, No. 37. The schedule of the notice to treat mentioned No. 37, but not 38, and the accompanying plan omitted the boundary of No. 38. This was held a sufficient notice to entitle to take No. 38. A mistake on the face of the plan, by which land intended to be taken is omitted, will prevent an entrance on such land. *Kemp* v. *London and Brighton Railway Co.*, 1 Rail. Cas. 495, 506.

The notice to treat does not require to be stamped as an agreement in order to obtain a decree for specific performance of a contract founded upon it. *Rawlings* v. *Metropolitan Rly. Co.*, 37 L. J. Ch. 824; 18 L. T. (N. S.) 871.

The effect of a notice to treat is that neither party can get rid of the obligation, the one to take and the other to give up the property. An owner who, after a notice to treat under sec. 18 of the Lands Clauses Consolidation Act, 1845, proposed to put up the property for sale, was restrained from doing so. *Metropolitan Rly. Co.* v. *Woodhouse*, 34 L. J. Ch. 297; 12 L. T. (N. S.) 113. See, however, *Burges* v. *Bristol Urban Sanitary Authority*, *post*, vol. ii. p. 989. An interest in property, e.g., a lease, created after notice to treat, is not a subject for compensation. *In re Marylebone Improvement Act*, *Ex parte Edwards*, L. R. 12 Eq. 389; 40 L. J. Ch. 697.

A notice to treat is not equivalent to requiring possession, so as to entitle a tenant for a year or from year to year to compensation. *Reg.* v. *Stone*, L. R. 1 Q. B. 529; 35 L. J. M. C. 208. If the lands, &c., required are in the possession of a person having no greater interest therein than as tenant for a year or from year to year, notice may be given to him under sec. 121 of the Lands Clauses Act, 1845, requiring him to give up possession before the expiration of his term, in which case he is entitled to compensation for the value of his unexpired term or interest. Or, on compulsory purchase, due notice may be given to such tenant to give up possession on the expiration of his term or interest, in which case he will not be entitled to compensation. *Syers* v. *Met. Bd. Wks.*, 36 L. T. (N. S.) 277. See also *Ex parte Nadin*, 17 L. J. Ch. 421.

(*t*) **Compensation.** See the preceding note, and note (*f*) to sec. 135, *ante*.

(*u*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*x*) **Sell and dispose of any land.** The special Acts obtained by the Metropolitan Board of Works and the County Council usually contain directions as to the disposal of surplus lands which they are empowered to acquire for the purposes therein authorised.

(*y*) "**Grant.**" Sec. 132 of the Lands Clauses Act, 1845, prescribes the effect of the word "grant" in conveyances under that Act. Sec. 49 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), provides that the word "grant" is not necessary to convey hereditaments.

before becoming so vested, was vested in any commissioners or other body, or in any officer of any commissioners or other body, or in any surveyor of highways, shall be applied in or towards the discharge of any debts or liabilities for the discharge whereof rates are by this Act authorised to be raised in the parish, or part, to the commissioners or other body for the management of the paving, lighting, or cleansing whereof such property may have belonged before the commencement of this Act, and, subject as aforesaid, shall be applied in aid of such rate to be raised under this Act in such parish or part as to the board or vestry disposing of such property may seem just; and any such board or vestry may let any land purchased by or vested in them under this Act, and which for the time being is not required for the purposes thereof, in such manner and on such terms as such board or vestry may see fit. 18 & 19 Vict. c. 120

155. Provided always, that where any land or any right or easement in or over land is purchased by the said *Metropolitan Board* (*z*), or any district board or vestry, under this Act, it shall be lawful for the owners of or parties entitled to sell or convey such land, right, or easement to reserve upon the sale thereof to such board or vestry in and by the conveyance such right of pre-emption to the person for the time being entitled to the land (if any) from which the land so purchased was severed, or in or over which such right or easement is granted, as is provided by sections 128, 129, and 130 of the said Lands Clauses Consolidation Act (*a*); but, except where such right of pre-emption is so reserved, there shall be no such right, notwithstanding the incorporation of the said Lands Clauses Consolidation Act with this Act. Owners of land may on sale reserve a right of pre-emption.

156. In case any person having the charge, control, or possession of any property, matters, or things vested in the *Metropolitan Board of Works* (*z*), or the vestry of any parish, or any district board, by or under this Act, neglect or refuse to give up the same, on demand, to such board or vestry, or such person as they respectively may order, every person so offending shall, upon being convicted thereof before any two justices of the peace, for every such offence forfeit and pay, over and above the value of the property not given up, such sum not exceeding five pounds as the said justices may think fit (*b*). Penalty for withholding property transferred to county council or any vestry or district board.

157. [*Breaking up turnpike roads. Rep. by Met. Man. Amend. Act, 1862, sec. 33, post.*]

Provisions for defraying Expenses of Vestries and District Boards.

158. Every vestry and district board shall from time to time, by order under their seal (*c*) require the overseers (*d*) of their parish, or of the How sums to be raised by vestries and district boards for defraying their expenses.

(*z*) **Met. Bd. Wks.** See note (*u*) on page 172.

(*a*) **Lands Clauses Act, 1845.** See note (*m*) to sec. 151, *ante*.

(*b*) **Recovery of penalty.** See sec. 227, *post*.

(*c*) **Order under seal.** The order becomes effective when sealed, and rates made by overseers in pursuance of such order, after notice of it having been sealed, are valid, notwithstanding that the order may not have been served on them. *Glen* v. *Fulham Overseers*, 14 Q. B. D. 328; 54 L. J. M. C. 9.

(*d*) **Overseers.** The expression "overseers of the poor" includes any persons authorised to make and collect or cause to be collected the rate for the relief of the poor in any parish. Sec. 250, *post*. Where, under a local Act, the guardians alone had the power of making and levying the poor rates, and the vestry issued to the overseers an order which was duly served upon the guardians, it was held to be no objection to the rate that the order was addressed to the overseers instead of to the guardians. *Christie* v. *Guardians of St. Luke, Chelsea*, 27 L. J. M. C. 153; 22 J. P. 496.

18 & 19 Vict. c. 120.

several parishes in their district (*e*), to levy, and to pay over to the treasurer of such vestry or board, or into any bank in such order mentioned, and within the time or times thereby limited, the sums which such vestry or board may require for defraying the expenses of the execution of this Act (and such orders may be made wholly or in part in respect of expenses already incurred or of expenses to be thereafter incurred); and every such vestry and board shall distinguish in their orders sums required for defraying expenses of constructing, altering, maintaining, and cleansing the sewers or otherwise connected with sewerage, and also, where the Lighting and Watching Act, 1833 (*f*), or any other Act by virtue whereof land is rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is wholly exempted from being rated in respect of such expenses, is in force in any parish, or any part of any parish, at the time of the passing of this Act, distinguish, as regards such parish, or part, the sums required for defraying expenses of lighting their parish or district from sums required for defraying other expenses of executing this Act; but every such vestry and board may cause to be raised as expenses connected with sewerage such portion of the expenses incident to the conduct of their business in relation to sewerage, in common with the conduct of their other business under this Act, as to such vestry or board may seem just; and the overseers or collectors, in the receipts to be given for the sums levied or collected by them, shall distinguish the rate in the pound required for sewerage expenses, and the rate required for the other expenses of this Act.

3 & 4 Will. 4, c. 90.

Vestries and boards may exempt parts not benefited by expenditure from payment.

159. Where it appears to any vestry or district board that all or any part of the expenses for defraying which any sum is by such vestry or board ordered to be levied as aforesaid have or has been incurred for the special benefit of any particular part (*g*) of their parish or district, or

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The appointment of overseers, and their powers, duties, and liabilities, may, on the application of any London sanitary authority, be conferred by the Local Govt. Bd. on such authority. Loc. Govt. Act, 1894, sec. 33, *post*, p. 535.

(*e*) **Several parishes in district.** Where parishes have been united into a district, the expenses of keeping the pavements in repair, and every other expense of cleansing and lighting, ought to be charged on each parish in proportion to its rateable value. If some portions of the district are not paved at all, or are insufficiently paved, the expense of putting them in as good a condition as the sufficiently paved portions ought to be borne by those parishes in which those unpaved or insufficiently paved portions are situate. *St. Botolph Without, Aldgate (Overseers of)* v. *Whitechapel Dist. Bd.*, 29 L. J. M. C. 228.

(*f*) **Lighting and Watching Act, 1833.** This Act only applies to parishes in which it has been adopted under the regulations therein contained. *Ib.* sec. 4, *et seq.* Where the Act is not in force throughout the whole of a parish or district, but has been adopted for a part or parts only, the vestry or district board is by implication directed to distinguish the sum required for lighting the *whole* parish, and to order a separate sum to be levied for defraying such expenses, which must be by a lighting rate for the *whole* parish. *St. James, Westminster (Overseers of)* v. *St. Mary, Battersea (Overseers of)*, 29 L. J. M. C. 26.

(*g*) **Special benefit of any part.** If the inhabitants of part of a parish claim exemption on the ground that the outlay will specially benefit another part, it is entirely discretionary in the vestry or district board to resolve how far, on a view of all the circumstances, they ought to give effect to the claim, and the Court will not interfere with the conclusion at which they arrive. *Reg.* v. *Fitch*, 24 J. P. 163. *Semble* that the claim should be made to the vestry or district board before the order is made. *Ib.* In order to test the validity of a special rate for a special district, an appeal must be made to quarter sessions. It is no answer to an application for a distress warrant for its recovery, that the expenses for which the rate is levied are recoverable only under secs. 52 and 53 of the Met. Man. Amend. Act, 1862, *post*. *Bates* v. *Plumstead Overseers*, *post*, p. 178.

otherwise have or has not been incurred for the equal benefit of the whole (*h*) of their parish or district, such vestry or board may, by any such order, direct the sum or sums necessary for defraying such expenses or any part thereof to be levied in such part, or exempt any part (*i*) of such parish or district from the levy, or require a less rate to be levied thereon, as the circumstances of the case may require; and any such board may refrain, where any entire parish ought in their judgment to be so exempt, from issuing an order for levying any money thereon, notwithstanding they may issue an order or orders for levying sums upon any other parish or parishes in their district. 18 & 19 Vict. c. 120.

160. Where part of any parish is placed for all or any of the purposes of this Act under the management of the vestry or district board of an adjoining parish or district (*k*), the sums which such vestry or board may require for defraying the expenses (*l*) of executing this Act by such vestry or board in the part so placed under their management shall be from time to time paid, upon their orders (*m*) by the vestry of the parish whereof such part is so placed under the management of such other vestry or board, or if such parish is comprised in a district formed by this Act then by the district board of such district; and such sums shall be raised by the vestry or board upon whom such orders are made in like manner as if the expenses in respect whereof the same are required had been incurred by them in executing this Act. Provisions for cases where a part of a parish is placed under the management of the vestry or board of adjoining parish or district.

(*h*) **Equal benefit of whole.** The duty is cast on the vestries and district boards to apportion the burden according to the benefit. If any property has not equal benefit with the rest of the property in the parish from the paving expenses in respect of that part, the owners are entitled to be relieved *pro tanto*. If the fact of the inequality exists, although it has not appeared to the vestry, the Court of Appeal, on a case stated, would be bound to direct the rate to be amended according to the truth of the fact. *Howell* v. *London Dock Co.*, 8 E. & B. 212; 27 L. J. M. C. 177. It was there held that a dock company were exempt from being rated in respect of profits which are not immediately connected with any use of paved streets, such as those accruing from the use of the area covered with water by ships, and from the use of bonded warehouses for goods which, having been imported, remained there for a time, and are then exported. Erle, J., in *Reg.* v. *Gt. Western Rly. Co.*, E. B. & E. 600, at p. 613, *n.*; 28 L. J. M. C. 59, at p. 64, protested against this case being cited as an authority, but it was subsequently followed by the Court of Appeal in *Reg.* v. *London and Brighton Rly. Co.*, 5 Q. B. D. 89; 48 L. J. M. C. 116. In that case a precept to the overseers for the levy of a rate stated that the expenses in respect of which it was needed were not required for the equal benefit of the parish, and directed that as regards such parts of the parish as consisted of arable, meadow, or pasture land, the rate should be assessed on a lower scale. It was held that the precept was good, notwithstanding that the classes of land mentioned therein did not lie together or form any division marked out by metes and bounds, but were scattered through the parish.

(*i*) **Exempt any part.** Where a district board decided that a waterworks company were not entitled to exemption, the Court refused to grant a *mandamus* to compel the board to make an order of exemption. *West Middlesex Waterworks Co.* v. *Wandsworth Dist. Bd.*, 22 J. P. 336. The parts exempted need not lie together or form any division marked out in metes or bounds, and may consist of a number of parts scattered throughout the parish or district. *Reg.* v. *London and Brighton Rly. Co.*, *supra*.

(*k*) **Adjoining parish.** Under sec. 140, *ante*, the County Council has power to place a part of one parish under the management of an adjoining vestry or district board.

(*l*) **Defraying expenses.** As to the power of the County Council to apportion these expenses, see Met. Man. Am. Act, 1862, sec. 86, *post*.

(*m*) **Upon their orders.** Where such vestry or board makes an order under the present section upon an adjoining parish or district, if the order is good on the face of it, it appears that the proper mode of questioning the amount is by application to the auditor under sec. 195, *post*, and sec. 38 of the Metropolis Man. Amend. Act, 1862, *post*. It is no answer to a writ of *mandamus*, that the order is made for expenses incurred before the date of the order of the County Council, or that the order of the vestry ordered more than was due; and the Court will grant a peremptory *mandamus* for payment of the amount. *Reg.* v. *Strand Dist. Bd.*, 4 B. & S. 526; 33 L. J. M. C. 33.

18 & 19 Vict. c. 120.

Overseers to collect the rate in the same manner as the poor rate.

161. The overseers of the poor of every parish to whom any such order as aforesaid is issued shall levy the amount mentioned therein (*n*) according to the exigency thereof, and shall for that purpose make separate equal pound rates upon their parish, or the part thereof upon which any sum specified in such order is required to be levied, in respect of each sum thereby ordered to be levied; that is to say, a separate rate in respect of each sum ordered to be levied for defraying expenses connected with sewerage, to be called a sewers rate; a separate rate in respect of each sum ordered to be levied for defraying expenses of lighting (where a separate sum is ordered to be levied for defraying such expenses), to be called a lighting rate; and a separate rate in respect of each sum ordered to be levied for defraying other expenses of executing this Act, to be called a general rate (*o*): and shall make such respective rates of such amount in the pound on the annual value of the property rateable (*p*) as will in their

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(*n*) **Overseers shall levy.** See note to sec. 158, *ante*, for meaning of overseers. As to the appointment of special persons to levy rates in case of default of overseers, see sec. 168, *post*.

(*o*) **Separate rates.** No rate, except the lighting and sewer rates, can be made independently of and distinct from the general rate. *Reg.* v. *Great Western Rly. Co.*, E. B. & E. 600; 28 L. J. M. C. 59. This section directs the vestry to guide itself by the rate for the relief of the poor in each parish, and no property should be separately assessed or exempt unless it is so dealt with in the poor rate for the parish, without any reference to distinctions in local Acts. *Ib.*

(*p*) **Property rateable.** The following are the principal properties rateable to the relief of the poor:—Lands, houses, tithes impropriate, propriations of tithes (Poor Relief Act, 1601 (43 Eliz. c. 2), sec. 1); land used for the plantation of wood or for the growth of underwood, and not subject to any right of common; rights of fowling, shooting, taking or killing game, and fishing, when severed from the land; and mines of every kind (Rating Act, 1874 (37 & 38 Vict. c. 54), sec. 3); advertising stations and hoardings. Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27). See *Chappell* v. *St. Botolph* (*Overseers of*) (1892), 1 Q. B. 561; 56 J. P. 310. The undertakers of any undertaking under the Lands Clauses Consolidation Act, 1845, *post*, vol. ii. tit. "*Lands Clauses*," taking lands charged with the land tax or poor rate, are required to make good the deficiencies in these from time to time until the works are completed and assessed to them. *Ib.* sec. 133; see *Farmer* v. *London and North-Western Rly. Co.*, 20 Q. B. D. 788; 59 L. T. (N. S.) 542. In some special Acts the promoters are required to make good the deficiencies in the other rates also. See *Burrup* v. *London and South-Western Rly. Co.*, 64 L. T. (N. S.) 112.

Certain classes of property are exempt from rating. Crown property, royal parks, palaces, prisons, barracks, &c., are exempt. *Leith Commissioners* v. *Inspector of Poor*, L. R. 1 H. L. Sc. App. 17: *Gambier* v. *Lydford Overseers*, 3 E. & B. 346; 23 L. J. M. C. 69. And also property in the occupation of persons on behalf of the Crown, unless their accommodation is in excess of that required for the fulfilment of their duties. *Lord Amherst* v. *Lord Sommers*, 2 T. R. 372. But tenants of Crown property holding for their own private benefit are rateable. *Reg.* v. *Ponsonby*, 3 Q. B. 14; 11 L. J. M. C. 65. Post offices are exempt (*Reg.* v. *Smith*, 7 E. & B. 483; 26 L. J. M. C. 105), but not property and undertakings purchased by the postmaster-general under the Telegraph Act, 1868 (31 & 32 Vict. c. 110). County buildings, used for Crown purposes, such as courts of assize and quarter sessions, police stations, &c., are exempt, unless profit be made from their use. *Reg.* v. *Castle View, Leicester*, L. R. 2 Q. B. 497; 36 L. J. M. C. 101. But where part of a county building is used exclusively for administrative business by the county council, or is used partly for such business and partly for Crown purposes, the part so used is rateable. *Middlesex Coun. Counc.* v. *St. George's Union Assessment Committee* (1897), 1 Q. B. 64; 66 L. J. Q. B. 101; *Worcestershire Coun. Counc.* v. *Worcester Union Assessment Committee* (1897), 1 Q. B. 480; 66 L. J. Q. B. 323. Public sewers are exempt, but not property acquired for the purpose of works in connection with them. *London Coun. Counc.* v. *Dartford Union, &c.* (1893), A. C. 562; 63 L. J. M. C. 9. The following are also exempt:—Churches, chapels, and other places of religious worship under the Poor Rate Exemption Act, 1833 (3 & 4 Will. 4, c. 30); personal property under the Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89); lands and buildings of, and occupied by, scientific, literary, and fine art societies, supported by annual voluntary contributions, under the Scientific Societies Act, 1843, *post*, vol. ii. tit. "*Scientific Societies*;" reformatory schools

judgment, having regard to all circumstances, be sufficient to raise the sums specified in such order; and such rates shall be levied on the persons and in respect of the property by law rateable to the relief of the poor (*q*) in the respective parishes, and shall be assessed upon the net annual value (*r*) of such property ascertained by the rate for the time being for the relief of the poor; and the said overseers shall, for the purpose of levying such rates, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor (*s*); 18 & 19 Vict. c. 120.

established according to the Reformatory Schools Act, 1866, *post*, vol. ii. (*Sheppard* v. *Bradford*, 16 C. B. (N. S.) 369; 33 L. J. M. C. 182), but not industrial schools certified under the Industrial Schools Act, 1866, *post*, vol. ii. (*Reg.* v. *West Derby*, L. R. 10 Q. B. 283; 44 L. J. M. C. 98); volunteer storehouses and premises under the Volunteer Act, 1863 (26 & 27 Vict. c. 65), sec. 26 (*Pearson* v. *Holborn Union* (1893), 1 Q. B. 389; 62 L. J. M. C. 77); Sunday and ragged schools, in the discretion of the rating authority, under the Sunday and Ragged Schools (Exemption from Rating) Act, 1869 (32 & 33 Vict. c. 40), sec. 1 (*Bell* v. *Crane*, L. R. 8 Q. B. 481; 42 L. J. M. C. 122); voluntary schools, Voluntary Schools Act, 1897 (60 Vict. c. 5), sec. 3; lighthouses, buoys, and property of the lighthouse authorities. Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), sec. 731. Unproductive property, e.g., an exhausted mine, is not rateable (*Rex* v. *Bedworth*, 8 East, 387), and unoccupied property is also exempt (*Reg.* v. *Malden*. L. R. 4 Q. B. 326; 38 L. J. M. C. 125. *Smith* v. *New Forest Union*, 61 L. T. (N. S.) 870; 54 J. P. 324. Open spaces held by the County Council, where the expenses of maintenance exceed the receipts, are exempt. *London Coun. Counc.* v. *Lambeth Overseers* (1896), 2 Q. B. 25; 65 L. J. M. C. 148.

For five years from March 31st, 1897, agricultural land is rateable only at one-half the rate in the pound payable in respect of buildings and other hereditaments. Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), *post*, vol. ii. tit. "*Rating*."

(*q*) **Persons rateable.** By the Poor Relief Act, 1601 (43 Eliz. c. 2), sec. 1, the poor rate is to be made on every inhabitant, parson, vicar, and on every occupier of lands, houses, tithes impropriate, and appropriations of tithes, or coal mines in the parish. But by the Poor Rate Exemption Act, 1840 (3 & 4 Vict. c. 89), no inhabitant of any parish, as such inhabitant, is to be rated to the poor rate "in respect of his ability derived from the profits of stock in trade or any other property." The occupiers, or, in some cases, the owners of the property referred to in the Rating Act, 1874 (see preceding note); the owners, or persons permitting the use of advertising stations (Advertising Stations (Rating) Act, 1889); the owners of tithe rent-charges (Tithe Act, 1891 (54 Vict. c. 8)); and the owners of dwelling-houses or tenements wholly let out in apartments or lodgings not separately rated (Representation of the People Act, 1867 (30 & 41 Vict. c. 102), sec. 7); are rateable to the relief of the poor. In case the annual value of any rateable hereditament in the Metropolis does not exceed twenty pounds, the owner may agree, or the vestry may order him, to be rated instead of the occupier, subject to an abatement. Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), secs. 3 and 4. Ambassadors and attachés are not liable to be rated in respect of the property occupied by them in their official capacity, or as their private residence. *Parkinson* v. *Potter*, L. R. 16 Q. B. D. 152; 55 L. J. Q. B. 153.

(*r*) **Net annual value** apparently means the rateable value, for definition of and method of ascertaining which see the Valuation (Metropolis) Act, 1869, *post*, vol. ii. tit. "*Rating*." Arable or meadow lands, orchards, market gardens, &c., are rateable to the sewers rate at one-fourth of their net annual value. Sec. 163, *post*. Exemptions, reductions, or allowances existing at the time of the issuing of the first commission under the Metropolitan Sewers Act, 1848 (11 & 12 Vict. c. 112), in respect of the sewers rate are to be observed and allowed. Sec. 164, *post*, and see note thereto. Exemptions and reductions from the lighting rate existing with respect to land at the time of the passing of the present Act must be allowed. Sec. 165, *post*. Burial grounds purchased or acquired under the provisions of any of the burial Acts, while used for such purpose, are assessed to county, parochial, or other local rates, at a value or improved rent not higher than that at which they were assessed at the time of purchase or acquisition. Burial Act, 1855 (18 & 19 Vict. c. 128), sec. 15.

(*s*) **Levying poor rate.** It is the duty of overseers to collect the poor rate. Apart from statute they cannot employ a collector for the purpose, and pay him out of the parish funds. *Rex* v. *Gwyer and Manley*, 4 Nev. & M. 158; 2 A. & E. 216. But the actual collection is usually entrusted to paid collectors appointed by the vestries under their local Acts, or under sec. 7 of the Poor Relief Act, 1819 (59 Geo. 3, c. 12), or under sec. 61 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101). In those parishes where the guardians collect the poor rate, they may appoint collectors under sec. 62 of the last-mentioned Act. In every case in which the vestry ~~or district~~

18 & 19 Vict. c. 120.

and all such rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal (*t*) and to excusing persons from payment on account of poverty (*u*) and otherwise, as the rate for the relief of the poor in the same parish; and such overseers shall pay (*x*) to the treasurer of the vestry or board, or otherwise, as in such order directed, the amount mentioned in the order, within the time or respective times specified for that purpose, and the excess, if any, which may have been levied beyond such amount, which excess shall be placed to the credit of the parish or part in which the same has been levied; and the said overseers shall at the time of making any such payment deliver with the money a note in writing signed by them, specifying the amount so paid, which note shall be kept as a voucher for the receipt of that particular amount; and the receipt of the treasurer of the vestry or board, or of any proper officer or person of or belonging to any bank into which such money is so paid, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount.

Public buildings and void spaces now rateable (except churches and burial grounds) to continue rateable.

162. Provided always, that all such hospitals, public schools (*y*), and other public buildings, dead walls, and void spaces of ground as are now by law rateable to any rate for the costs and charges of paving or repairing the pavements within any parochial or other district, either separately or jointly with any other object or objects, (except only places of religious worship, and burial grounds (*z*), or places which have been used for burial grounds,

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~~board~~ does not appoint a collector or collectors the overseers may do so. Met. Man. Amend. Act, 1862, sec. 14, *post*.

Payment of the poor rate is enforced by distress and imprisonment (Poor Relief Act, 1601 (43 Eliz. c. 2), sec. 2; and the Distress for Rates Act, 1849 (12 & 13 Vict. c. 14)); and a married woman separately assessed may be proceeded against in the same manner. *In re Elizabeth Allen* (1894), 2 Q. B. 924; 63 L. J. M. C. 267. A churchwarden or overseer is as liable to be distrained upon for the amount of his rate as any other person. *Skingley* v. *Surridge*, 11 M. & W. 503; 12 L. J. M. C. 122. In proceedings for the recovery of any rates, all the rates for the recovery of which proceedings are taken must be included in the same summons. Met. Man. Amend. Act, 1862, sec. 18, *post*.

(*t*) **Appeal.** See the Valuation (Metropolis) Act, 1869, secs. 5, 11, 19, 32, 40, and 42, *post*. vol. ii. tit. "*Rating*."

An appeal to sessions, as provided by that Act, is the proper procedure for contesting the validity of a rate. The only objections to a rate which can be entertained on proceedings for its recovery are: (1) That the property rated is not in the parish; (2) That the party rated is not the occupier; (3) That the rate is on the face of it bad. *Bates* v. *Plumstead Overseers*, 64 L. J. M. C. 127; 59 J. P. 118. See also *Empson* v. *Met. Bd. Wks.*, 25 J. P. 677; *Met. Bd. Wks.* v. *Vauxhall Bridge Co.*, 26 L. J. Q. B. 253. If a person does not attend to answer a summons for non-payment of rates, he is not entitled to have the warrants afterwards quashed on affidavits stating that he is neither the owner nor the occupier of the premises, and that the overseers know who is the owner. *Reg.* v. *Tompkins*, 31 J. P. 470.

(*u*) **Excusal of rates.** Any two or more justices acting for the county in which the parish is situated, in petty sessions assembled, may, with the consent of the churchwardens and overseers, on proof of the inability from poverty of any person to pay any rate, order that such person be excused from payment thereof. Poor Relief Act, 1814 (54 Geo. 3, c. 170), sec. 11.

(*x*) **Overseers shall pay.** In case of non-payment of the amount ordered, the overseers may be distrained upon. Sec. 166, *post*. For further provisions respecting paying over and accounting for moneys levied by overseers, and for penalties for default, see Met. Man. Amend. Act, 1862, sec. 14, *post*.

(*y*) **Hospitals, public schools, &c.** Formerly hospitals and buildings used for the like charitable purposes were considered exempt, as it was thought that there was no beneficial occupation, but now they are held to be rateable. *London (Mayor of)* v. *Stratton*, L. R. 7 H. L. 477; 45 L. J. M. C. 23. See note (*p*) to sec. 161, *supra*, as to what other property is exempt from rating.

(*z*) **Places of religious worship; burial grounds.** Places of religious worship are exempt from rating, under 3 & 4 Will. 4, c. 30. As to the rating of burial grounds, see note (*r*) to sec. 161, *supra*.

and are not used for any other purpose,) shall be rateable under this Act to the like extent and for the like objects or purposes as they may now be rated, and the rates to be made in respect of such objects or purposes shall be payable by the persons now liable to pay the same, and be recoverable in like manner, as any rate to which such buildings and spaces of ground are now rateable as aforesaid in respect of the like objects or purposes. 18 & 19 Vict. c. 120.

163. Provided also, that any sewers rate raised under this Act shall, as regards all land used as arable, meadow, or pasture ground (*a*) only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, be assessed and levied in the proportion of one-fourth part only of the net annual value of such land (*b*). Land to be rated to the sewers rate at one-fourth part of its annual value.

164. Provided also, that where any property was at the time of the issuing of the first commission under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve (*c*), entitled to exemption from or to any reduction, or allowance in respect of the sewers rate (*d*), such exemption, reduction, or allowance shall be observed and allowed in levying any sewers rate under this Act. Existing exemptions in respect of sewers rate to be allowed.

(*a*) **Pasture ground.** Under the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), land which in its natural state was rateable as pasture land was held to be rateable at the full assessment when occupied by a booth erected on it. *Reg.* v. *Briscoe*, 20 J. P. 52.

(*b*) **One-fourth of net annual value.** The allowances and abatements provided for in this section and sec. 164 must be made in the precepts issued by the County Council, and must be inserted in the valuation lists by the overseers and assessment committees. Met. Man. Amend. Act, 1875, *post*, vol. ii. tit. "*Rating*."

(*c*) **11 & 12 Vict. c. 112,** i.e., the Metropolitan Sewers Act, 1848. See note to sec. 145, *ante*.

(*d*) **Exemption in respect of sewers rate.** The intention of the Act was to treat as exempt all subjects that by the existing legislation were not liable. The word "exempt" does not imply that a tax has once been put on and then taken off again, and that a subject cannot be exempted except it was once liable. It is used quite correctly where the subject was never before liable, and is intended not to be so. *Reg.* v. *East London Waterworks Co.*, 24 J. P. 52. Commutation tithe rent-charge is liable to the general rate and lighting rate, but not to the sewers rate, levied under sec. 161, *ante*, in those parishes where it was the practice before the Metropolitan Sewers Act, 1848, to exempt tithes from the sewers rate. *Reg.* v. *Goodchild and Lamb*, E. B. & E. 1 ; 27 L. J. M. C. 233, 251. *Semble*, that commutation, tithe rent-charge is not liable by law to contribute to a sewers rate. *Ib.* In assessing property to the sewers rate under this Act, the old law of sewers must in general prevail,—that if property be situated within the area benefited by the sewers, it must contribute without any reference to the amount of benefit derived; and if the property does not fall within the classes mentioned in sec. 163, or the present section, it must be assessed at its full value, as ascertained by the poor rate for the time being. *Imperial Gas Light Co.* v. *Met. Bd. Wks.*, 32 L. J. M. C. 115. Therefore, gas mains are assessable at their full value, without any deduction on the ground of deriving less benefit from the sewers than house property. *Ib.* Hammersmith Bridge itself was drained directly into the Thames, but the approaches drained into the public sewer, and it was held that though the bridge itself did not derive any direct or immediate benefit from the sewer, the property did derive "the general benefit of being accessible, and of its approaches and neighbouring public waste being properly drained and cleaned," and that therefore the bridge, as well as the approaches, was liable to the sewers rate. *Hammersmith Bridge Co.* v. *Hammersmith Overseers*, L. R. 6 Q. B. 230 ; 40 L. J. M. C. 79.

See further as to what property is exempt, note (*p*) to sec. 161, *ante ;* and as to the old law of sewers, see Callis's "Statute of Sewers," p. 263 *et seq. ;* Woolrych's "Law of Sewers ;" and Kennedy and Sandars' "Land Drainage and Sewers." Also compare the present section with sec. 211 (1) (c) of the Public Health Act, 1875 (38 & 39 Vict. c. 55), which contains a similar provision with regard to "any kind of property" exempted.

See note to sec. 163, as to the allowance of these exemptions in the precepts of the County Council, and their insertion in the valuation list.

18 & 19 Vict. c. 120.

Existing exemptions of land from lighting rates to be allowed. 3 & 4 Will. 4, c. 90.

165. Provided also, that in every parish or part of a parish in which at the time of the passing of this Act, the Lighting and Watching Act, 1833 (*e*), is in force, the owners and occupiers of houses, buildings, and property other than land (*f*) shall be rated to every lighting rate made under this Act at a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated in such lighting rate; and in every parish or part of a parish in which under any other Act land is now rated in respect of expenses of lighting at a less amount in proportion to the annual value thereof than houses, or is now wholly exempted (*g*) from being rated in respect of such expenses, such land shall continue to be rated to every lighting rate made under this Act at such less amount, or, where such land is now wholly exempted as aforesaid, shall be wholly exempted from such rate.

Overseers, on nonpayment of the rate, shall be distrained upon;

and in default of sufficient distress the arrears may be levied on the parish.

166. In case the amount ordered by any such order as aforesaid to be paid by the overseers of any parish be not paid in manner directed by such order and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the vestry or board, or by any person authorised by them for this purpose, to issue his warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers be not sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like methods.

Provision for cases where the vestry of any parish in schedule (A.) make the poor rate.

167. Where the vestry of any parish mentioned in schedule (A.) to this Act make the rate for the relief of the poor in such parish, such vestry shall from time to time raise and levy the sums required for defraying their expenses of executing this Act in like manner as overseers are required to

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(*e*) **Lighting and Watching Act, 1833.** As to the application of the Act, see note (*f*) to sec. 158, *ante*. Before the present Act came into force, part only of the parish of Fulham was under the operation of the Lighting and Watching Act, and it was held that the exemption under the present section applied only to that portion, and that the lighting rate in respect of the other part of the parish should be uniform, and upon the higher scale. *Reg.* v. *Fitch*, 32 L. T. (N. S.) 327; 24 J. P. 163.

(*f*) **Property other than land.** In a parish where the Lighting and Watching Act, 1833, had been adopted, it was held that a waterworks company were rateable at the lower rate, as occupiers of land, for their pipes under the surface of the soil. *Reg.* v. *Vauxhall Waterworks Co.*, 6 E. & B. 1008; 20 J. P. 788. Under sec. 33 of the Lighting and Watching Act, 1833, it was held that a dock or tidal basin was property *ejusdem generis* with houses and buildings mentioned in the Act, and therefore rateable at the higher amount, Erle, J., dissenting. *Peto* v. *West Ham*, 28 L. J. M. C. 240. This case was much discussed in *Reg.* v. *Neath Overseers*, L. R. 6 Q. B. 707; 40 L. J. M. C. 193, where it was held that "property" means things *ejusdem generis* with houses and buildings, and does not include a canal or towing path, bridges and dry docks, which are accessories which must be considered part thereof, and the whole of which ought to be rated as land. This case was followed in *Reg.* v. *Midland Rly. Co.*, L. R. 10 Q. B. 389; L. J. M. C. 137, where it was held that a line of railway is "land;" and again, in *Thursby* v. *Briercliffe with Entwistle Churchwardens* (1895), A. C. 32; 64 L. J. M. C. 66, in which coal mines were held to be "property other than land," within the meaning of the section, Herschell, L. C., expressing the opinion that "property other than land" could not be restricted to things *ejusdem generis* with houses and buildings.

(*g*) **Exempt under other Act.** Prior to the passing of the present Act, the lighting of Mile End Old Town was regulated by a local Act, under which it had been held that the East London Waterworks Company were not rateable to the lighting rate. It was held that they came, therefore, within the provisions of the present section, and were exempt from the lighting rate. *East London Waterworks Co.* v. *Overseers of Mile End Old Town*, 29 L. J. M. C. 66.

do with respect to the sums for which orders are made upon them by any vestry under this Act (*h*), and shall, in raising such sums, act upon the like principle and have the like discretion as any vestry making orders upon overseers under this Act; and where any parishes maintain their poor in common by a common rate, the orders for levying any money by this Act directed to be made on the overseers of such parishes shall be made on the overseers by law authorised to levy such rate thereon, and such sums shall be levied by such overseers, in manner provided by this Act, as if such parishes were one parish. 18 & 19 Vict. c. 120.

Special persons may be appointed to levy rates in certain cases.

168. Any vestry or district board may, in case of any default or neglect of any overseers to pay the amount required by any such order as aforesaid within the time and in the manner directed by such order, and the said *Metropolitan Board* (*i*) may, in case of any default or neglect of any vestry or district board to pay the amount required by any precept (*k*) of the said *Metropolitan Board* (*i*) within such time and in such manner as may be therein mentioned, appoint persons to levy any money required (*l*) by such vestry or board for the purposes of this Act in any parish or district, and such persons shall proceed in the same manner, and have the same powers, remedies, and privileges (*m*), and be subject to the same regulations and penalties (*n*), with reference to the levying of such money, as any overseers would have had or been subject to with reference to levying any such money in pursuance of an order of the vestry or district board, or, where the same might be levied by the vestry under this Act (*o*) as such vestry would have had or been subject to with reference to levying the same.

Provision for deduction by tenants of sewers rate.

169. As between landlord and tenant, every tenant, whether his tenancy have commenced before or after the passing of this Act, and who if this Act had not been passed would have been entitled to deduct against or to be repaid by his landlord any sum paid by such tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord any sewers rate levied on him under this Act (*p*).

(*h*) **In like manner as overseers.** See note (*s*) to sec. 161, *ante*.

(*i*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*k*) **Precepts.** The precepts of the County Council are issued to the guardians. See the Loc. Govt. Act, 1888, secs. 3 (1), 40 (9), and 68 (4), *ante*; and the County Rates Act, 1852, sec. 26, *post*, vol. ii. tit. "*Rating*." Secs. 27 and 28 of the latter Act contain provisions for levying the rate in default of the guardians.

(*l*) **Appoint persons to levy.** An appeal to quarter sessions lies against a rate made by assessors appointed under this section in the same way as against a rate made by overseers under sec. 161, *ante*; and where the rate is *ex facie* good, a magistrate cannot entertain, on proceedings for its recovery, questions affecting its validity, such as that the appointment of the assessors was invalid; that the rate was for byegone debts, &c. *Empson* v. *Met. Bd. Wks.*, 3 L. T. (N. S.) 624; 25 J. P. 677. See further as to appeal note (*t*) to sec. 161, *ante*.

(*m*) **Powers and remedies of overseers.** See note (*s*) to sec. 161, *ante*.

(*n*) **Regulations and penalties.** See note (*s*) to sec. 161, *ante*.

(*o*) **Levy by vestry.** See sec. 167, *supra*.

(*p*) **Deduction of sewers rate.** A sewers rate is a charge in respect of the fee simple of the land, and the tenant is entitled to deduct the amount of such rate from the next payment of his current rent, unless he has entered into an agreement to the contrary. *Smith* v. *Humble*, 15 C. B. 321; *Waller* v. *Andrews*, 3 M. & W. 312; *Bennett* v. *Womack*, 7 B. & C. 627; 3 C. & P. 96. As to rights existing as between landlord and tenant, for the purposes of the county rate, see the Met. Bd. Wks. (Loans) Act 1869, sec 23, *post*, vol. ii. tit. "*Loans*."

18 & 19 Vict. c. 120.

Provisions for defraying expenses of Metropolitan Board.

170. [*Sums to be assessed by Met. Bd. Wks. Rep. and replaced by the Met. Man. Amend. Act, 1862, sec. 5, et seq. post.*]

Power to county council or any one authorised by them, to inspect rates made for county or part of county within the Metropolis.

171. The clerk of the said *Metropolitan Board* (*q*), or any person authorised by the said *Board* in this behalf, may from time to time inspect any rate (*r*) made or to be made for any county any part of which is within the Metropolis (*s*); and any basis or standard for the county rate of any such county, and any returns concerning all or any of the parishes and places, whether parochial or extra-parochial in the Metropolis, delivered or to be delivered in pursuance of any Act relating to county rates, and any rate made by the commissioners of sewers of the City of London (*t*), and any valuation on which the same is made, and may take copies or extracts from any such rates, basis or standard, returns or valuation, without payment of any fee or reward; and if any person having the custody of any such rate, basis or standard, return or valuation, wilfully neglect or refuse to permit any such clerk or person authorized as aforesaid to inspect the same, or to take copies or extracts of or from the same, at all reasonable times, he shall forfeit for every such offence any sum not exceeding ten pounds.

Payment to be obtained from the City and from parishes by precepts to the chamberlain of the City and to vestries and district boards.

172. For obtaining payment of the sums so assessed upon the City of London and the parishes mentioned in schedules (A.) and (B.) to this Act, the said *Board* (*q*) shall issue precepts (*u*) under their seal, requiring payment thereof to their treasurer, or into any bank therein mentioned, within such time as may be therein limited, and every such precept for any sum assessed upon the city of London shall be directed to the chamberlain of the said City; and every such precept for any sum assessed upon any parish mentioned in schedule (A.) to this Act shall be directed to the vestry thereof; and every such precept for any sum assessed upon any district mentioned in schedule (B.) to this Act, or any parish comprised therein, shall be directed to the board of works for such district; and where any such sum is assessed upon any part of any parish or district, the said *Metropolitan Board* (*q*) shall specify in their precept the part of such parish or district upon which such sum is assessed.

Payment of sums assessed upon the City.

173. The chamberlain of the City of London shall, out of any moneys in the chamber of the said city, pay to the treasurer of the *Metropolitan Board of Works* (*q*), or otherwise as they may direct, the sums required by their precepts, within such time as may be therein mentioned; and all payments so made by the said chamberlain shall be charged by him against

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(*q*) **Metropolitan Board.** Now the London County Council Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*r*) **Inspect any rate.** The county council, vestries, and district boards may also demand to be furnished with copies of poor rates, &c. Met. Man. Amend. Act, 1862, sec. 15, *post*.

(*s*) **County within Metropolis.** At the time of the passing of this Act, parts of the counties of Middlesex, Surrey, and Kent were within the Metropolis. Such parts were severed from those counties and formed into the county of London by the Loc. Govt. Act, 1888, sec. 40 (2), *ante*. The Metropolis now constitutes the administrative county of London (*Ib.* sec. 100), throughout the whole of which the County Council is the authority for levying the county rate. *Ib.* sec. 3 (i).

(*t*) **Commissioners of sewers of the City.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.

(*u*) **Precepts.** The precepts of the County Council are issued to the guardians. See note (*k*) to sec. 168, *ante*.

and reimbursed to him out of any rates which the Commissioners of Sewers of the City of London (*x*) are authorised to direct to be made under any Act relating to the sewerage of the said city; and such commissioners shall have full power to raise every such sum by any such rate which they may be authorised to direct to be made as aforesaid, or by any addition thereto. 18 & 19 Vict. c. 120.

Payment by vestries and district boards of sums assessed by county council.

174. All sums which any vestry or district board may be required to pay by such precepts as aforesaid shall be paid by such vestry and board respectively within such time as may be therein mentioned, and shall be raised in like manner as if the same were required by the said vestry or board for defraying the expenses of such vestry or board in the execution of their powers and duties under this Act in relation to the sewerage of their parish or district.

Provision for assessing and levying rates in places where there is no poor rate.

175. The sums which may be assessed from time to time upon any place mentioned in schedule (C.) to this Act, or such part thereof as may not be comprised within any parish, or the City of *London*, shall be raised by means of a rate to be made and levied as herein provided; that is to say, the said *Metropolitan Board* (*y*) shall from time to time, by warrant under their seal, appoint a proper person to be an assessor, for the purpose of assessing the full and fair annual value (*z*), of all property in every such place, or such part thereof as aforesaid, which, if the same were not extra-parochial, would be liable to be rated to the relief of the poor (*a*), and rating the same to a rate to be levied under this Act (*b*); and such assessor shall, within forty days after the delivery to him of the warrant of his appointment, make, sign, and return to the said Board (*y*), an assessment for the place named in such warrant; and the assessment shall be fairly written in a book, and shall specify, in different columns, the names of the respective inhabitants or occupiers of all messuages, lands, tenements, and heraditaments, the full and fair annual value of the same, and the amount of rate charged on the inhabitants or occupiers thereof, and when the premises are unoccupied, the full and fair annual value thereof to let; and every such assessor shall be allowed for his trouble and expenses such remuneration as the said Board may think fit; and the same shall be paid out of the amount of the rate which shall be collected after such assessment; and the said rate to be levied as aforesaid shall, for the purposes of the provisions of this Act relating to exemption from and reduction or allowance in respect of sewers rate, and relating to deduction and repayment of sums paid on account of sewers rate, be deemed a sewers rate.

Mode of making the assessment.

Allowance to assessors.

(*x*) **Commissioners of sewers of the City.** See note (*t*) on page 182.

(*y*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*z*) **Annual value.** So much of this section as relates to ascertaining the value of any hereditament with respect to the value of which the valuation list required by the Valuation (Metropolis) Act, 1869, is conclusive is repealed by sec. 77 of that Act, *post*, vol. ii. tit. "*Rating*."

(*a*) **Liable to poor rate.** By the Extra-Parochial Places Act, 1857 (20 Vict. c. 19), extra-parochial places are deemed to be parishes for the purposes of the poor rate, county rate, &c., and overseers are appointed for them (sec. 1). In the Inner Temple, Middle Temple, and Gray's Inn the under treasurer is the overseer. *Ib.* sec. 2.

(*b*) **Rate to be levied.** The sum assessed is obtained by a precept issued by the County Council, and directed to the masters of the bench, treasurers, governors, or other body of persons having the chief control or authority in such place, who raise and levy the money required. Met. Man. Amend. Act, 1862, sec. 12, *post*.

18 & 19 Vict. c. 120.

Places in schedule (C.) not now under rating for sewers not to be rated except for intercepting sewers.

176 (*c*). Provided always, that the places mentioned in schedule (C.) to this Act which are not now under rating for sewers shall not be liable to be rated under this Act, except for the purpose of their contributing to the expense of carrying into effect any plan for preventing the sewage of the Metropolis from flowing into the river *Thames* in or near the Metropolis, so far as such places respectively shall be benefited.

When assessment is made, notice thereof to be given, and all persons included in the assessment to have liberty to inspect it, &c.

Penalty for refusing inspection.

177. When such assessment has been allowed by the said *Board* (*d*), public notice of such assessment, and of the place where the same may be inspected, shall be given by fixing such notice on the door of the church or chapel or some other conspicuous part of the place to which such assessment relates, upon the *Sunday* next or next but one after the same has been so allowed; and any person in whose custody such assessment may be shall permit every inhabitant or owner or occupier of property included in such assessment to inspect the same, and to make any extracts therefrom, without payment of any fee or reward; and if such person wilfully neglect or refuse to permit any such inhabitant, owner, or occupier to inspect such assessment or to make any extract therefrom, he shall, on conviction thereof before any two Justices of the Peace, forfeit for every such offence such sum, not exceeding five pounds, as the Justices think meet.

As to the collection of the rate charged in such assessment.

178 (*e*). The said *Board* (*d*), shall from time to time nominate one or more person or persons for levying the amount of rate charged in every such assessment, who shall proceed in the same manner, and shall have the same powers, remedies, and privileges, and be subject to the same regulations and penalties, with reference to the levying of such rate, as if he or they were an overseer or overseers of the poor in a place rated to the relief of the poor, and shall pay over the amount of such rate to the treasurer of the said *Board* or otherwise as the said *Board* may direct, or in default thereof shall be proceeded against in the same manner as overseers are by this Act to be proceeded against for nonpayment.

Appeal against assessment.

179 (*f*). Provided always, that if any person who has paid the amount of rate charged upon him by the assessment made by an assessor appointed under this Act think himself aggrieved by such assessment, on the ground that such assessment includes property for which he is not rateable under this Act, or that it assesses his rateable property beyond its full and fair annual value, or that any person is omitted out of such assessment, or that the property of any person is assessed below its full and fair annual value, the person so aggrieved may appeal to the next court of general or quarter sessions for the county or franchise in which the cause of appeal arises, not less than twenty-one days after public notice of such assessment has been given as hereinbefore mentioned; provided that the person so

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(*c*) **Exemption of places in schedule (C).** This section is virtually repealed and superseded by the Met. Bd. Wks. (Loans) Act, 1869, sec. 25, *post*, vol. ii. tit. "*Loans*."

(*d*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*e*) **Section 178.** This section is superseded by sec. 12 of the Met. Man. Amend. Act, 1862, *post*, which contains other provisions for levying the rate in places in schedule (C).

(*f*) **Section 179.** So much of this section as relates to ascertaining the value of any hereditament with respect to the value of which the valuation list provided for by the Valuation (Metropolis) Act, 1869, is conclusive, is repealed by sec. 77 of that Act, *post*, vol. ii. tit. "*Rating*."

intending to appeal shall give to the said *Board* (*g*), a notice in writing of such appeal, and of the cause and matter thereof, ten clear days at the least before such sessions, and shall also, within three days after his notice of appeal, enter into a recognizance before some justice of the peace of the county or franchise, with two sufficient sureties, conditioned to try such appeal at the said sessions, and to abide the order of the court thereupon, and to pay such costs as shall be by the court awarded; and in case such person appeal on the ground that any person is omitted out of the assessment, or that the property of any person is assessed below its full and fair annual value, the party so appealing shall not only give such notice of appeal to the said *Board* (*g*), and enter into such recognizance as aforesaid, but shall also give a like notice of appeal to the person so interested in the event of such appeal as aforesaid; and the person so interested shall, if he desire it, be heard upon the appeal; and the justices of the peace at such sessions or some adjournment thereof, upon due proof of the notice having been given, and of the recognizance having been entered into as aforesaid, shall hear and determine the matter of the appeal in a summary manner, and shall make such order therein, with or without costs to either party, as the said justices think proper; and in case the said justices think the appellant entitled to relief, they shall order the assessment to be amended in such manner as may be necessary for giving him relief, and shall also order any money paid by him which he was not liable to pay to be returned to him; and in case he have appealed on the ground that any person is omitted out of the assessment, the said justices may order the name of such person to be inserted in the assessment, and to be therein rated at such amount as they deem just; and in case the appellant have appealed on the ground that the property of any person is assessed below its full and fair annual value, the said justices may order the amount at which such person is rated in the assessment to be altered in such manner as they deem just; and the proper officer of the court shall in each of the cases aforesaid forthwith amend the assessment accordingly, but the assessment shall not be quashed or altered with respect to any other persons named therein; and the determination of the justices at any such sessions or adjournment shall be final and conclusive.

18 & 19 Vict. c. 120.

The assessment may be altered to relieve the appellant without altering any other part of it.

Provisions for discharging existing Liabilities of Boards or Bodies having Powers of Paving, &c., and of the Metropolitan Commissioners of Sewers (h).

180. All debts and liabilities legally charged upon or payable out of any rates or assessments authorised to be levied or made under any Act relating to the paving, lighting, watering, cleansing, or improving of any parish in either of the schedules (A.) and (B.) to this Act, or any part of any such parish, shall be charged upon the rates (other than those to be raised for defraying expenses of sewerage, and (where separate rates are made under this Act for defraying expenses of lighting) expenses of lighting,) to be raised under this Act in such parish or part, and the several district boards and vestries shall cause the sums necessary for discharging such debts and liabilities to be raised in their respective districts and parishes accordingly (*i*);

Provision for discharging existing liabilities under local Acts relating to paving, &c.

(*g*) **Metropolitan Board.** See note (*d*) on page 184.
(*h*) **Metropolitan commissioners of sewers.** See note to sec. 145, *ante*.
(*i*) **Discharging debts and liabilities.** Trustees of Grosvenor Square, in pursuance of a local Act, borrowed money, which, together with interest, was charged

18 & 19 Vict. c. 120.

and such boards and vestries shall once in every year set aside, out of the rates charged under this Act with such debts and liabilities, such sum as they think proper, not being less than such percentage as hereinafter mentioned; that is to say, three pounds *per centum* where the amount of principal debt (exclusive of annuities) does not exceed one-fourth of the rateable value of the property rateable for payment thereof, and in other cases two pounds *per centum* on the amount of the principal debt (exclusive of annuities), for the purpose of paying off such principal, except where the interest only of such debt is charged upon such rates or assessments as aforesaid, and except also where any such debt was contracted under the authority of a local Act, and the local Act did not require that the principal of such debt should be paid off within a limited time; and the sums so from time to time set aside, and all moneys applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal as aforesaid, in manner by this Act provided with respect to sums set aside for the purpose of providing a fund for paying off mortgages granted under this Act: provided always, that where any debts or liabilities are charged on any rates or assessments not wholly levied or made in or upon any one parish mentioned in schedule (A.) to this Act, or any one district mentioned in schedule (B.) to this Act, the Metropolitan Board of Works shall apportion such debts and liabilities between the respective parishes and districts in or upon which such rates or assessments are authorised to be levied or made, and shall certify to the district board and vestry respectively of every such district and parish the amount of the apportioned part of such debts and liabilities to be discharged by rates to be raised in such parish or district, or any part thereof, under this Act, and such apportioned part shall be discharged accordingly: provided also, that nothing in this enactment shall affect the right of any creditor to require payment of any such debt as aforesaid within any less time than is prescribed by this enactment for the payment thereof.

Provision for payment of liabilities of metropolitan commissioners of sewers.

181. Notwithstanding the determination or expiration of the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve (*k*), all mortgages, annuities, securities, and other debts and liabilities (*l*) which at or immediately before such determination or expiration may be a charge on or payable out of all or any of the rates authorised to be levied thereunder shall continue in full force, and be a charge on the districts or parts in which such rates would have been

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on the rates levied under the Act. It was held that the present section and sec. 239 left in the trustees the enclosed ground and footway round it, together with all the duties and powers in relation to the future maintenance of such ground, &c., including the levying of rates for defraying the expenses incurred in the execution of such duties and powers, but transferred the debt charged on the rates under the special Act to the vestry. The Court granted a peremptory *mandamus* to the vestry to take the necessary steps for paying the principal and interest. *Reg.* v. *St. George's, Hanover Square*, 32 L. J. Q. B. 160; 27 J. P. 532. See also *Reg.* v. *Stretfield*, 32 L. J. M. C. 236; *Sanson* v. *Shoreditch Vestry*, 38 L. J. C. P. 286.

(*k*) **11 & 12 Vict. c. 112**, i.e., the Metropolitan Sewers Act, 1848. See note to sec. 145, *ante*.

(*l*) **Liabilities.** The liability of the commissioners to make compensation for land taken by them for the construction of a sewer transferred to the Met. Bd. Wks. was held to be recoverable from the Board, although at the determination of the powers of the commissioners the existence of such liability was not known. *Pettiward* v. *Met. Bd. Wks.*, 34 L. J. C. P. 301; 12 L. T. (N. S.) 764.

authorised to be levied in case such Act had continued in force (*m*), and all persons who may be entitled to any such mortgages, annuities, or debts shall have priority in respect of all moneys advanced before the passing of this Act over any moneys advanced to the Metropolitan Board of Works under this Act, and shall have the like priority among themselves as they are now entitled to under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, or any Act continuing or amending the same (*n*); and the sums from time to time becoming payable under or required for payment of the said mortgages, annuities, securities, debts, and liabilities shall be raised by the *Metropolitan Board of Works* (*o*) in such districts or parts in like manner as the expenses of such *Board* in the execution of this Act (*p*); and in case any such district or part be wholly or in part without the limits of the Metropolis, as defined by this Act (*q*), the said *Metropolitan Board* (*o*) shall from time to time issue precepts under their seal to the overseers of the parish or parishes in which any part without such limits is comprised, requiring payment to the treasurer of the said Board or into any bank in such precepts respectively mentioned, within such respective times as may be therein limited, of such sums as it may be necessary to raise in such part for the purposes aforesaid; and the provisions herein contained respecting the levying and payment of money by overseers in pursuance of any order of a vestry or district board (*r*) shall be applicable, *mutatis mutandis*, to and for the levying and payment of money by overseers in pursuance of any such

18 & 19 Vict. c. 120.

(*m*) **Charge on the districts or parts.** See Met. Man. Amend. Act, 1855, sec. 3, *post*, as to the apportionment to the various parishes of the debt due from the commissioners in respect of the loan from the Clergy Mutual Assurance Society. Where the Metropolitan Board, in order to provide for the payment of the liabilities of the commissioners of sewers in a certain district, apportioned the amount amongst the several parishes comprised in that district, according to the rateable value of the property in such parishes respectively, and not according to the proportion of the sum expended in such parishes respectively, or to the benefit derived by such parishes respectively from the expenditure, the rate was held to be valid. *Pew* v. *Met. Bd. Wks.*, 34 L. J. M. C. 97; 12 L. T. (N. S.) 140.

(*n*) **Priority.** Sec. 106 of the Metropolitan Sewers Act, 1848, required each mortgagee to be paid without any preference over any other mortgagee by reason of priority of advance. The continuing and amending Act of 1854 (17 & 18 Vict. c. 111), sec. 4, required mortgages, &c., existing at the passing of the latter Act, to be repaid in preference to mortgages and annuities created subsequently, but enacted that there should be no priority amongst subsequent mortgagees or annuitants. Nothing in sec. 22 of the Met. Bd. Wks. (Loans) Act, 1869, *post*, vol. ii. tit. "*Loans*," which provided for the levying of a consolidated rate, is to extend to any sum levied under the present section.

(*o*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*p*) **Expenses of executing Act.** See secs. 170—179, and notes thereto, *ante*.

(*q*) **District without limits of Metropolis.** Metropolis is defined by sec. 250, *post*. On the refusal of the overseers of a parish beyond the Metropolis, but within the limits of the Metropolitan Sewers Act, 1848, to make a rate for the purpose of paying off a debt due under that Act, it was held that the Metropolitan Board had power to appoint a person, under sec. 168, *ante*, to make such rate. *Reg.* v. *Glossop*, 32 L. J. M. C. 92. Where the Met. Bd. Wks. issued a precept to the overseers of a parish beyond the Metropolis, but liable to a mortgage debt under the Metropolitan Sewers Act, 1848, requiring them to pay a certain sum "for defraying the expenses of the Board in the execution of the Act," and a rate was made "for levying the sum required by the Met. Bd. Wks. for the purposes of the said Act," it was held that the precept and rate were bad on the face of them, as purporting to be made for purposes for which the parish was not liable to be rated. *Reg.* v. *Ingham*, 4 B. & S. 205; 32 L. J. M. C. 214.

(*r*) **Levying and payment by overseers.** See secs. 161—164 and 166—168, and notes thereto, *ante*.

18 & 19 Vict. c. 120.

precept as aforesaid of the said *Metropolitan Board* (*s*); and the said *Board* shall once in every year set aside such sum as they think proper, not being less than two pounds *per centum* on the amount of all principal moneys (exclusive of annuities) becoming payable by them under this enactment, for the purpose of paying off all such principal moneys; and the sums so from time to time set aside, and all moneys applied in augmentation thereof, and the proceeds thereof respectively, shall be applied and dealt with, for the purpose of paying off such principal moneys as aforesaid, in manner by this Act provided with respect to sums set aside for the purpose of providing a fund for paying off mortgages granted under this Act (*t*), and the sums to be so set aside shall be raised by such *Board* in manner aforesaid.

Where metropolitan commissioners of sewers have incurred expenses, to be paid by improvement rates, &c., the county council may levy such rates as remain due.

182. Where the metropolitan commissioners of sewers have incurred any expenses authorised by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, to be paid by an improvement rate, or as charges for default, it shall be lawful for the *Metropolitan Board of Works* (*s*) to levy improvement rates or charges (*u*) for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act, and the said Board shall have all the rights and remedies for the recovery thereof which are now vested in the metropolitan commissioners of sewers in this behalf.

General Powers to Metropolitan and District Boards and Vestries to borrow.

Power to boards and vestries to borrow money on mortgage.

183. It shall be lawful for the *Metropolitan Board* (*x*) and every district board and vestry, for the purposes of defraying any expenses incurred or to be incurred by them in the execution of this Act (*y*), to borrow and take up at interest, on the credit of all or any of the monies or rates authorised to be raised by them under this Act, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such board or vestry may mortgage and assign over to the persons by or on behalf of whom such sums are advanced the respective

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(*s*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*t*) **Paying off Mortgages.** See secs. 190 and 191, *post*.

(*u*) **Improvement rate.** A like power to make improvement rates, &c., for expenses of works of private improvement executed by the metropolitan commissioners of sewers, is conferred on the committee of appeal appointed under secs. 211 and 212, *post*, by the Met. Man. Amend. Act, 1862, sec. 30, *post*.

(*x*) **Borrowing by Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. So much of sec. 183 as relates to the mode of borrowing by the Metropolitan Board, is repealed by sec. 50 of the Met. Bd. Wks. (Loans) Act, 1869, *post*, vol. ii. tit. "*Loans*;" and the County Council are required to borrow in accordance with the provisions of that and the amending Acts. *Ib.* sec. 3; Loc. Govt. Act, 1888, sec. 40 (9), *ante*. By the Met. Bd. Wks. (Loans) Act, 1875, *post*, vol. ii. tit. "*Loans*," the powers of the Board to raise money by loans were limited to the amounts and period therein specified. Since that Act, the borrowing powers of the Board till its determination were, and the borrowing powers of the County Council are, regulated and limited from year to year by their annual Money Acts.

(*y*) **Borrowing by vestries and boards.** The provisions of this section, empowering vestries and district boards to borrow, are extended to street improvements by secs. 72 and 100 of the Met. Man. Amend. Act, 1862, *post*. And the purposes for which they may borrow are further extended by the Public Health (London) Act, 1891, sec. 105 (1), *post*, p. 337, and 1893, *post*, p. 360, note (*u*), and the London Coun. Counc. (Genl. Powers) Act, 1896, sec. 32, *post*, p. 337, note (*x*).

moneys or rates upon the credit of which such sums are borrowed; and the respective mortgagees shall be entitled to a proportion of the moneys or rates comprised in their respective mortgages, according to the sums in such mortgages mentioned to have been advanced; and each mortgagee shall be entitled to be repaid the sums so advanced, with interest, without any preference over any other mortgagee or mortgagees by reason of any priority of advance or the date of his mortgage: provided always, that no moneys shall be so borrowed by any district board or vestry without the previous sanction in writing of the said *Metropolitan Board*. 18 & 19 Vict. c. 120. No priority amongst mortgagees.

184. [*Rep.* 38 & 39 *Vict. c.* 66. (*Statute Law Revision.*)]

185 (*a*). Every mortgage authorised to be made under this Act shall be by deed duly stamped, truly stating the date, consideration, and the time of payment, and shall be sealed with the seal of the board or vestry, and may be made according to the form (E.) contained in the schedule to this Act annexed, or to the like effect, or with such variations or additions in each case as the board or vestry and the party advancing the money intended to be thereby secured may agree to; and there shall be kept at the office of the board or vestry a register of the mortgages made by them, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and descriptions of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds. Form of mortgage. Register of mortgages

186 (*a*). The board or vestry making any such mortgage may, if they think proper, fix a time or times for the repayment of all or any principal moneys borrowed under this Act, and the payment of the interest thereof respectively, and may provide for the repayment of such moneys, with interest, by instalments or otherwise, as they may think fit; and in case the board or vestry fix the time or times of repayment they shall cause such time or times to be inserted in the mortgage deed; and at the time or times so fixed for payment thereof such principal moneys and interest respectively shall, on demand, be paid to the party entitled to receive the same accordingly; and if no other place of payment be inserted in the mortgage deed, the principal and interest shall be payable at the principal office of the board or vestry, and, unless otherwise provided by any mortgage, the interest of the money borrowed thereupon shall be paid half-yearly; and if no time be fixed in the mortgage deed for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the board or vestry may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee shall be given in manner herein provided for service of notices on the board or vestry (*b*), and if given by the board or vestry Repayment of money borrowed at a time agreed upon. Interest on mortgages to be paid half-yearly. As to repayment of money borrowed when no time has been agreed upon.

(*a*) **Sections 185 to 191**, inclusive, are repealed, so far as regards the Met. Bd. Wks., by the Met. Bd. Wks. (Loans) Act, 1869, sec. 50, *post*, vol. ii. tit. "*Loans.*"

(*b*) **Service of Notices.** See sec. 220, *post*.

18 & 19 Vict. c. 120.

shall be given either personally to such mortgagee or left at his residence, or if such mortgagee or his residence be unknown to them, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette; and if the board or vestry have given notice of their intention to pay off any such mortgage at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the board or vestry fail to pay the principal and interest due at the expiration of such notice on such mortgage.

Interest to cease on expiration of notice to pay off a mortgage debt.

Power to borrow to pay off existing securities.

187 (*c*). It shall be lawful for the said *Metropolitan Board*, with respect to any security granted by the metropolitan commissioners of sewers, or granted by such *Board* under this Act, and for every district board and vestry, with respect to any security for any existing debt or liability which such board or vestry are by this Act required to discharge, and any security granted by such board or vestry under this Act, to raise and borrow the moneys necessary for paying off such security, and to pay off the same; and the moneys borrowed for the purpose of such payment shall be secured and repaid in like manner as if borrowed for defraying the expenses of the execution of this Act: provided always, that nothing herein contained shall extend to authorise the paying off of any security otherwise than in accordance with the provisions thereof.

Payment of principal and interest may be enforced by the appointment of a receiver.

188 (*c*). If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage made under this Act, or under the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve, or any Act continuing or amending the same (*d*), and after demand in writing, the same be not paid, the mortgagee may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices (*e*), who are hereby empowered, after hearing the parties, to appoint, in writing under their hands and seals, some person to collect and receive the whole or a competent part of the moneys or rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid; and upon such appointment being made all such moneys or rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees, and shall be rateably apportioned between or among them, but subject and without prejudice to such rights of priority, if any, as shall then be subsisting between the mortgagees or any of them: provided always, that no mortgagee shall be prejudiced, either directly or indirectly, by any loss which may be occasioned by the misapplication or nonapplication of any moneys or rates received by any receiver appointed otherwise than upon the application or with the express consent of such mortgagee, or by any act, deed, neglect, or default on the part of such receiver, but such loss shall be wholly borne by the mortgagee or mortgagees upon

(*c*) **Sections 185 to 191.** See note (*a*) on page 189.

(*d*) **11 & 12 Vict. c. 112,** i.e., the Metropolitan Sewers Act, 1848. See note to sec. 145, *ante*.

(*e*) **Two justices.** Or before a single metropolitan police magistrate. See note to sec. 225, *post*.

whose application or with whose express consent such receiver was appointed: provided also, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two or more mortgagees to whom there may be due, after such lapse of time, and demand, as last aforesaid, moneys collectively amounting to that sum. 18 & 19 Vict. c. 120.

Transfer of mortgages.

189 (*f*). Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date, the names and descriptions of the parties thereto, and the consideration for the transfer; and such transfer may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect; and there shall be kept at the office of every board and vestry making any mortgages under this Act a register of the transfers of such mortgages; and within thirty days after the date of any such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk of the board or vestry making the mortgage; and such clerk shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and upon any transfer being so registered, the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby; and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person, except the person to whom the same has been last transferred, his executors, administrators or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby. Register of transfers.

Sinking fund to be formed for paying off mortgages.

190 (*f*). For the purpose of providing a fund for paying off mortgages granted under this Act, the board or vestry granting such mortgage shall once in every year set aside, out of the moneys or rates charged thereby, such sum as they think proper, being not less than two pounds *per centum* on the amount of the principal moneys secured thereby; and the sum so from time to time set aside, and all other moneys applied by the board or vestry in augmentation of the said fund, shall be applied, in the manner hereinafter directed, in payment so far as the same will extend, of the principal money secured by such mortgages, or the same shall be invested in the public funds, or on Government or real security, in the name of the board or vestry; and the dividends and interest of the moneys so invested, when, and as the same become due, shall from time to time be received and invested in like manner, in order that the said moneys so set aside and invested may accumulate at compound interest; and when such accumulated fund amounts to a sum which, in the opinion of the board or vestry, can be conveniently applied for that purpose, the stocks, funds, or securities whereon the same is invested shall be sold or otherwise converted into money, and the moneys arising from any such sale and conversion shall be applied, in the manner hereinafter directed, in payment, so far as the same will extend, of the said principal moneys, and so from time to time until the whole of the said principal moneys are discharged.

Mode of paying off mortgages.

191 (*f*). When and as often as the board or vestry are enabled and think

(*f*) **Sections 185 to 191.** See note (*a*) on page 181.

18 & 19 Vict. c. 120.

it expedient to pay off one or more of the said mortgages, they shall cause the several numbers of such mortgages to be written upon distinct slips of paper of an equal size, and all such slips shall be rolled or folded up in a similar form, and put in a box, and the clerk of the said board or vestry shall, at a meeting of the board or vestry, draw separately out of the said box one of the said slips, and thereupon the mortgage corresponding with the number so drawn shall be paid off by the board or vestry; and after every such ballot the board or vestry shall cause a notice, signed by the clerk, to be given to the person entitled to the money to be paid off, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified in such notice, at the expiration of six months from the date of giving such notice; and at the expiration of such period the interest of the principal money to be paid off shall cease, unless such principal money and interest be not paid, on demand, pursuant to such notice; but such principal money, and the interest thereof to the end of the said six months, shall nevertheless be payable on demand.

Audit of Accounts.

Accounts of district boards and vestries to be balanced up to the end of each year.

192. (*g*) . . . Every district board, and the vestry of every parish mentioned in either of the schedules (A.) and (B.) to this Act, shall, in the month of April in every year, cause their accounts to be balanced up to the twenty-fifth day of March next preceding, and shall cause a full statement and account to be drawn out of the amount of all contracts entered into and of all moneys received and expended by them during the preceding year, under the several distinct heads of receipt and expenditure, and also of all arrears of rates and other moneys then owing to such respective board or vestry, and of all mortgages and other debts and liabilities then owing by such board or vestry: provided always, that where by reason of the time established by or under any local Act for making and collecting rates in any parish the time hereby fixed for making up the accounts is inconvenient, it shall be lawful for the *Metropolitan Board of Works* (*h*) to order that the time of making and collecting such rates, and the period for which any such rate may be made, shall be altered as to the said Board may appear convenient.

193. [*Rep.* 55 & 56 *Vict. c.* 19 (*Statute Law Revision*).]

Auditors to be elected annually by the district boards.

194. Every district board shall, in the month of April in every year, elect by ballot from among the persons acting as auditors for the parishes (*i*) in the district three persons, not being members of such board, to be auditors for the current year of the accounts of such board; and in case of the death of any such auditor the board by whom he was elected shall forthwith elect in a similar manner some other such person as

(*g*) **Section 192.** The omitted words applied to the Met. Bd. Wks., and are repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.). The accounts of the County Council are made up to March 31st each year. Loc. Govt. Act, 1888, secs. 71 (1) and 73 (1), *ante*.

(*h*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*i*) **The auditors for the parishes** are elected annually in the month of May, at the same time as the vestrymen. Secs. 7 and 11, *ante*.

aforesaid in his place, and the powers hereby given to the said auditors may be exercised by any two of them. 18 & 19 Vict. c. 120.

As to the audit of accounts.

195. (*k*) . . . The auditors of the accounts of every district board and every such vestry as aforesaid, shall, in the month of May, on such day or days as shall be fixed by . . . them for the audit of such respective accounts, attend at the office . . . of such district board or vestry, (as the case may require,) for the purpose of auditing their accounts; and such respective boards and every such vestry shall, by their clerks, treasurers, and other officers, produce and lay before such . . . auditors at every such audit their accounts for the year preceding, together with the statement and account hereinbefore mentioned, accompanied by proper vouchers for the support of the same, and submit to . . . their inspection all books, papers, instruments, and writings in their custody or control relating thereto; and such . . . auditors, in the presence of such of the members of such respective boards or vestries and of the ratepayers and creditors on the rates as desire to attend, shall audit the accounts hereinbefore mentioned, and may examine any of the members of such respective boards or vestries or their officers whom . . . they shall deem accountable (and whom . . . they . . . are hereby empowered to summon, by writing under . . . their . . . hands, or under the hand of any one of them, to appear before . . . them for the purpose of such examination,) touching the said accounts, and shall also hear any complaint (*l*) . . . which any such ratepayer or creditor shall at the time of such audit make touching such accounts; and such . . . auditors shall have full power to examine, audit, allow, and disallow (*m*) the said accounts and items therein, and shall charge in such accounts all sums (if any) which ought to be accounted for, and are not brought into account; and if such accounts be found correct, such . . . auditors, or the major part of them, shall sign the same in

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(*k*) **Section 195.** The omitted words applied to the accounts of the Met. Bd. Wks., and are repealed by 55 & 56 Vict. c. 19 (Statute Law Revision). As to the audit of the accounts of the county council, see the Loc. Govt. Act, 1888, sec. 71 (3), *ante*, and the Pub. Hlth. Act, 1875, secs. 247 and 250, and the District Auditors Act, 1879, *post*, vol. ii. tit. "*Audit*."

(*l*) **Complaint.** Where an order of a vestry or district board, made under sec. 160, *ante*, for a contribution towards expenses incurred under that section, is good on the face of it, the only mode of appeal is by contesting the propriety of the assessment at the audit, and the Court, on a return to a *mandamus* ordering payment of the sum assessed, will not go into the matter, but will grant a peremptory *mandamus*. *Reg.* v. *Strand Dist. Bd.*, 4 B. & S. 526; 33 L. J. M. C. 33.

(*m*) **Disallowance by auditors.** As to the discretion of the auditors in disallowing improper expenditure, see *Reg.* v. *Knott*, and *Barton* v. *Piggott*, *post*, vol ii. p. 707.

A metropolitan vestry, being a statutory body, has no power to apply its rates outside the purposes for which it is constituted. Per North, J., in *Att.-Gen.* v. *Lambeth Vestry*, 4 T. L. R. 257; (1888) W. N. 19. No power is conferred on it by the Met. Man. Acts to apply its rates in the promotion of a bill in Parliament. *Ib.* A vestry has no power to apply its rates in paying the expenses of a dinner or ceremonies in connection with the opening of a new vestry hall. *Att.-Gen.* v. *Bermondsey Vestry*, 23 Ch. D. 60, 52 L. J. Ch. 567. See also *Reg.* v. *Bideford* (*Mayor, &c., of*), 47 J. P. 756. Individual vestrymen cannot properly be made defendants in an action for an injunction to restrain improper expenditure, for the purpose of obtaining costs from them; but *quære*, if a vestry be condemned in costs, whether such vestry could not recover them from the members who voted for the illegal expenditure. *Att.-Gen.* v. *Bermondsey Vestry*, *supra*. A vestry was restrained by injunction from contributing money out of the rates towards the costs of certain ratepayers for the purpose of obtaining a declaration of the law as to the right of a waterworks company to make certain charges. *Att.-Gen.* v. *Camberwell Vestry*, 63 L. J. Ch. 878; 71 L. T. (N. S.) 478.

18 & 19 Vict. c. 120.

token of . . . their allowance thereof, *and such allowance shall be final and conclusive on all parties* (*n*).

Abstract of accounts to be made.

196. The (*o*) . . . auditors of the accounts . . . of every district board and vestry, shall, after such audit of accounts as aforesaid, cause an account in abstract to be prepared, showing the receipt and expenditure under this Act for the preceding year, under the several distinct heads of receipt and expenditure, with the statement of the allowance of the . . . auditors, if . . . they . . . have allowed such accounts, or of the parts, if any, which . . . they have disallowed of such accounts, and also a summary statement of all contracts entered into by such board or vestry in such preceding year, and of the moneys owing to and debts and liabilities owing by such board or vestry on the twenty-fifth day of March next preceding.

Accounts of other parochial boards to be audited by the auditors elected under this Act.

197. In all parishes mentioned in the schedules (A.) and (B.) to this Act, in which other boards have control over any part of the parochial expenditure, the auditors of accounts of the parish elected under this Act shall have the same power of examining the accounts and officers of the said boards as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the vestry, and the accounts of the said boards shall not be subject to any other audit: provided always, that nothing herein contained shall apply to accounts which if this Act had not been passed would have been subject to the audit of any auditor already or hereafter appointed under the authority of the Poor Law Amendment Act, 1834, or any Act incorporated therewith (*p*).

4 & 5 Will. 4, c. 76.

Annual Reports.

Annual reports by vestries and district boards.

198. Every such vestry as aforesaid and district board shall in the month of June in every year cause to be printed the said account in abstract and summary statement for the preceding year, relating to such vestry or board, and also make and cause to be printed therewith a report of their proceedings in the execution of this Act, and of the works commenced and completed respectively in the preceding year by such vestry or board, and the works remaining in progress at the termination of such year, and also of any proceedings taken by them or under their authority in the preceding year, in pursuance of any regulations of the *General Board of Health* (*q*), for the time being in force, or otherwise, for

(*n*) **Conclusiveness of auditors' allowance.** Any person aggrieved by any allowance, disallowance, or surcharge by any auditors may apply for a writ of *certiorari* to remove the matter to the Court of Queen's Bench. Met. Man. Amend. Act, 1862, sec. 38, *post*.

(*o*) **Section 196.** The omitted words applied to the accounts of the Met. Bd. Wks. See note (*k*) to sec. 195, *supra*.

(*p*) **Poor Law Amend. Act, 1834.** Sec. 46, *inter alia*, empowered the Poor Law Bd. to direct guardians to appoint auditors to audit their accounts. The provisions of that section as to auditors are repealed and replaced by the District Auditors Act, 1879, *post*, vol. ii. tit. "*Audit*." The present section (197) is not repealed by sec. 3 of the Met. Man. Amend. Act, 1856, *post*, and it was held that directors of the poor elected by a vestry under a local Act, were "guardians" within the definition of sec. 109 of the Act of 1834, and that an order of the Poor Law Bd. to appoint an auditor under sec. 46 of that Act was properly addressed to them. *Reg.* v. *St. Pancras Directors of the Poor*, 27 L. J. M. C. 281; 22 J. P. 385. See also *Reg.* v. *St. James, Westminster, Directors of the Poor*, 29 L. J. M. C. 4; 23 J. P. 339.

(*q*) **General Board of Health.** This Board was constituted by sec. 4 of the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63). It was abolished, and its powers were transferred to the Loc. Govt. Bd. by the Loc. Govt. Bd. Act, 1871 (34 & 35 Vict. c. 70).

the removal of nuisances or the improvement of the sanitary condition of their parish or district (*r*) . . . and every such vestry and board shall in the said month of June send a copy of every such account in abstract, statement, and report, together with a printed list of the names and addresses, of the members of such vestry and board, and of their officers, to the *Metropolitan Board of Works* (*s*); and every vestry and district board shall permit inspection at their office of a copy of any such account in abstract, statement, and report by any ratepayer in their parish or district, without payment, at all reasonable times, and shall also permit the like inspection by the public generally of such list of officers; and copies of such account in abstract, statement, and report, and list of officers, shall be delivered to any person applying for the same, on payment of such reasonable sums, not exceeding twopence for each such copy, as may be fixed by such vestry or board in this behalf. 18 & 19 Vict. c. 120.

Vestry to make out and publish yearly a list of estates, charities, and bequests, &c., with the application thereof.

199. Every such vestry as aforesaid shall cause to be made out once at least in every year a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the parish, and under the control of the vestry, the list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity (*t*); and such lists shall be open for the inspection of the ratepayers at the office of the vestry clerk at the same time with the accounts when audited according to the provisions of this Act.

200, 201. [*Rep. by* 56 & 57 *Vict. c.* 54 (*Statute Law Revision*).]

Byelaws (*u*).

Power to county council to make byelaws.

202. The *Metropolitan Board of Works* (*s*) and every district board and vestry respectively may from time to time make, alter, and repeal byelaws for all or any of the purposes following; (that is to say,) for regulating the business and proceedings at their meetings (*y*), and of

(*r*) **Section 198.** The omitted words are repealed and replaced by the Pub. Hlth. (Lon.) Act, 1891, secs. 106 (5) and 142, *post*.

(*s*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*t*) **Parochial charities.** The Charitable Trusts Amend. Act, 1855 (18 & 19 Vict. c. 124), sec. 44, requires trustees and administrators of parochial charities to deliver a copy of their annual account to the churchwardens of the parish with which the objects of such charities are identified, who are required to present the same at the next general meeting of the vestry of such parish, and insert a copy in the minute book of the vestry.

(*u*) **Byelaws.** As to byelaws generally, their construction, validity, and effect, see notes to sec. 23 of the Mun. Corp. Act, 1882, *ante*. Other Acts set out in these volumes confer on the county council and the vestries and district boards further powers of making byelaws, for reference to which see the index.

(*y*) **Proceedings at meetings.** The power of the County Council to make byelaws for regulating the proceedings at their meetings is subject to the provisions of the schedule to the Lon. Coun. Counc. (Gen. Powers) Act, 1893, *ante*, p. 114.

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committees appointed by them, the appointment and removal of their officers and servants, and the duties, conduct, and remuneration of such officers and servants; and the said *Metropolitan Board* (*z*), may also from time to time make, alter, and repeal byelaws for regulating (*a*) . . . the material of the pavement and roadway of new streets and roads (*b*), . . . (*a*) and for regulating the dimensions, form, and mode of construction, and the keeping, cleansing, and repairing, of the pipes, drains (*c*), and other means of communicating with sewers (*d*), and the traps and apparatus connected therewith; . . . (*a*) and for regulating the form of appeal (*e*), and mode of proceeding thereon; and generally for carrying into effect the purposes of this Act; and every such board and vestry may thereby impose such reasonable penalties (*f*), as they think fit, not exceeding forty shillings, for each breach of such byelaws, and in case of a continuing offence (*g*) a further penalty not exceeding twenty shillings for each day after notice of the offence from the board or vestry: provided always, that under every such byelaw it shall be lawful for the justices (*h*), before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty: provided also, that no byelaws shall be repugnant to the laws of England or to the provisions of this Act; and that no byelaw shall be of any force or effect unless and until the same be submitted to and confirmed at a subsequent meeting of the board or vestry: provided also, that no penalty

Penalty for breach of byelaws.

Power to justices to remit penalties.

(*z*) **Metropolitan Board.** See note (*s*) on page 195.

(*a*) **Section 202.** The words omitted from lines 8 and 9 are repealed and replaced by the London Building Act, 1894, secs. 164 (1) and 215, *post*. The words omitted from line 13 are repealed and replaced by the Pub. Hlth. (London) Act, secs. 16 (2) and 142, *post*.

(*b*) **New streets.** For definition of "new street," see sec. 105, and note thereto, *ante*. No byelaws regulating the material of the pavement, &c., of new streets have been made under this section. As to the plans, level, width, surface, and inclination of new streets, see the London Building Act, 1894, sec. 164 (1) *post*.

(*c*) **Drains, &c.** For definition of "drain," see sec. 250, and note (*d*) thereto, *post*. Up to the date of publication of this work, no byelaws as to drains had been issued under this section, though such byelaws had been drafted, and were under the consideration of the County Council.

(*d*) **Sewers.** The County Council may also make byelaws for the guidance of vestries, &c., in the construction of sewers. Met. Man. Amend. Act, 1862, sec. 83, *post*.

(*e*) **Appeal,** i.e., the appeal to the appeal committee of the county council, under sec. 211, *post*.

(*f*) **Penalties.** As to recovery of penalties, see sec. 227, *post*. The validity of a byelaw may be tested in proceedings to recover the penalty. *Piper* v. *Chappell*, *ante*, p. 85.

(*g*) **Continuing offence.** It was held that continuing to build in contravention of a byelaw made under the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), might be a "continuing" offence; but that the failure to destroy a building after it was completed was not. *Marshall* v. *Smith*, L. R. 8 C. P. 416; 42 L. J. M. C. 108. But sec. 158 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), makes the continued existence of such a building a "continuing" offence. Under the latter Act, the erection of an addition to a house projecting beyond the building is a "continuing" offence so long as the projection exists. *Rumball* v. *Schmidt*, 8 Q. B. D. 603; 46 L. T. (N. S.) 661. It was held to be a continuing offence not to pull down a building which had been erected above the height prohibited by the repealed sec. 85 of the Met. Man. Amend. Act, 1862 (25 & 26 Vict. c. 102), *post*. *Lon. Coun. Counc.* v. *Worley* (1894), 2 Q. B. 826; 63 L. J. M. C. 218.

(*h*) **Justices.** Or a single metropolitan police magistrate. See note to sec. 225, *post*.

shall be imposed by any such byelaw unless the same be approved by one of Her Majesty's principal Secretaries of State (*i*). 18 & 19 Vict. c. 120.

Publication of byelaws.

203. All byelaws made and confirmed as aforesaid in pursuance of this Act shall be printed, and hung up in the principal office of the board or vestry, and be open to public inspection without payment, and copies thereof shall be delivered to any person applying for the same, on payment of such sum, not exceeding twopence, as the board or vestry shall direct; and such byelaws, when so published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same; and the production of a printed copy of such byelaws, authenticated by the seal of the board or vestry, shall be evidence of the existence, and of the due making, confirmation, and publication of such byelaws, in all prosecutions under the same, without adducing proof of such seal or of the fact of such confirmation or publication of such byelaws.

Evidence of byelaws.

Provisions for Protection of Property and Works of Metropolitan and District Boards and Vestries, and preventing Obstruction in Execution of Works.

Buildings not to be made over sewers without consent.

204. No building (*k*) shall be erected in, over, or under any sewer (*l*) vested in the *Metropolitan Board of Works* (*m*), or in any vestry or district board, without their consent first obtained in writing, and if any building be erected contrary to this provision the board or vestry in whom such sewer is vested may demolish the same, and the expenses incurred thereby shall be paid by the person erecting such building.

Penalty on persons sweeping dirt into sewers.

205. No scavenger or other person shall sweep, rake, or place any soil, rubbish, or filth, or any other thing, into or in any sewer or drain, or over any grate communicating with any sewer or drain (*n*), or into any dock or inlet communicating with the mouth of any sewer or drain, or into which any sewer or drain may discharge its contents, or into the river Thames (*o*),

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(*i*) **Approved by Secretary of State.** If a byelaw is bad, its allowance by a Secretary of State will not cure its invalidity. *Reg.* v. *Wood*, and *Elwood* v. *Bullock*, *post*, p. 358.

(*k*) **Building.** A house erected on the surface of the ground without foundations is a building within the meaning of this section. *Poplar Dist. Bd.* v. *Knight*, *infra*. See further, as to what is a building, notes to sec. 5 (6) and sec. 22 of the London Building Act, 1894, *post*.

(*l*) **Sewer.** For definition of "sewer" see sec. 250, *post*, and note (*d*) thereto. A marsh wall or embankment that keeps back the river Thames at high water from inundating the Isle of Dogs, and through which sewers pass which drain the Isle at low water, is a sewer within the meaning of sec. 204. *Poplar Dist. Bd.* v. *Knight*, E. B. & E. 408; 28 L. J. M. C. 37.

For other provisions for the protection of sewers, see sec. 83, *ante*; the Met. Man. Amend. Act, 1862, secs. 68 and 69, *post*, and the London Coun. Counc. (Genl. Powers) Act, 1894, secs. 8—17, and notes thereto, *post*, p. 526.

(*m*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. As to what sewers are vested in the County Council, see sec. 135, *ante*, and in the vestries and district boards, see sec. 68, *ante*.

(*n*) **Sweeping filth into sewer.** Scavengers who had swept mud to the side of a street, and sent it by means of water through a grating into a sewer, were convicted of an offence against this section. *Met. Bd. Wks.* v. *Eaton*, 50 L. T. (N. S.) 634; 48 J. P. 611. Any person who throws any dirt, offal, rubbish, &c., into any sewer or drain is liable to a penalty not exceeding forty shillings under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), sec. 60 (3).

(*o*) **River Thames.** A penalty not exceeding twenty pounds, and a daily penalty not exceeding ten pounds, are imposed upon any person who, without lawful excuse,

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contiguous thereto; and every scavenger or other person who shall so offend shall for every such offence forfeit and pay any sum not exceeding five pounds (*p*).

Penalty for wilfully damaging, &c., lamps or other property of vestries or district boards, or of the county council.

206. If any person wilfully take away, break, throw down, or damage any lamp set up for lighting any of the streets in any parish mentioned in either of the schedules (A.) and (B.) to this Act, or wilfully extinguish the light within the same, or damage the iron or other furniture thereof, or wilfully damage (*q*) any other property (*r*) vested in any vestry or district board, or any property vested in the said *Metropolitan Board* (*s*), it shall be lawful for any person who sees such offence committed to seize, as also for any other person to assist in seizing, the offender, and by authority of this Act, and without any other warrant, to convey him, or to deliver him into the custody of a police officer in order to be secured and conveyed, before some justice; and if the party accused be convicted of such offence he shall forfeit the sum of forty shillings, and shall also pay to such vestry or board the amount of damage done.

Persons carelessly or accidentally damaging lamps, &c., to make satisfaction.

207. In case any person carelessly or accidentally break, throw down, or damage any such lamp, or the iron or other furniture thereof, or other such property as aforesaid, he shall pay the amount of damage done (*t*).

Penalty on interrupting workmen, &c., in execution of duties.

208. If any person at any time obstruct (*u*), hinder, or molest any surveyor, inspector, collector, or other officer, workman, or person whomsoever, employed by virtue of this Act, in the performance or execution of his duty, every such person so offending shall for the first offence forfeit and pay the sum of five shillings, for the second offence the sum of twenty shillings, and for any subsequent offence the sum of five pounds (*p*).

Penalty upon occupiers obstructing execution of works, or not disclosing owner's name.

209. If the occupier of any premises prevent the owner thereof from carrying into effect, with respect to such premises, any of the provisions of this Act, or any order of any vestry or district board made in pursuance thereof, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such refusal or neglect; and if the occupier

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throws or causes to fall any gravel, stones, mud, rubbish, or refuse into the river Thames, by the Thames Conservancy Act, 1894 (57 & 58 Vict. ch. clxxxvii.), sec. 92. Where the offence is committed from or out of a vessel, the master and the owner (provided both shall not be punished for the same offence) are liable (*ib.*), though committed in their absence and without their knowledge. *Flowers* v. *Raine*, 30 J. P. 135. See also *Reg.* v. *Stephens*, 30 J. P. 822.

(*p*) **Recovery of penalty.** See sec. 227, *post*.

(*q*) **Wilful damage.** Any person who unlawfully and maliciously commits damage upon any property either of a public or private nature is liable to imprisonment for a term not exceeding two months, or a penalty not exceeding five pounds. If the amount of damage exceeds five pounds, such person is guilty of a misdemeanour, and liable to imprisonment, or, if the offence is committed between 9 p.m. and 6 a.m., to be kept in penal servitude. The Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), secs. 51 and 52.

(*r*) **Any other property.** For penalties for interfering with or damaging sewers, see Met. Man. Amend. Act, 1862, secs. 68 and 69, *post*; for fixing bills on or defacing street posts, notice boards, buildings, &c. see *ib.* sec. 90, *post*; for damaging or fouling the water of wells, pumps or fountains, see Pub. Hlth. (London) Act, 1891, secs. 51 (3) and 53, *post*.

(*s*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*t*) **Accidental damage.** A master is not liable, in the absence of negligence, for the accidental breaking of a street lamp, projecting over the kerb, caused by a van driven by his servant coming into contact with it. *Harding* v. *Barker*, 37 W. R. 78; 53 J. P. 308. As to the manner of recovering the amount, see secs. 225 and 226, *post*.

(*u*) **Obstruct.** As to what amounts to obstruction, see *Small* v. *Bickley* and *Borrow* v. *Howland*, *post*, p. 343.

of any premises, when requested by or on behalf of the vestry or district board to state the name and description of the owner of the premises occupied by him, refuse or wilfully omit to disclose or wilfully mis-state the same, it shall be lawful for any justice to summon the party to appear before him or some other justice at a time and place to be appointed in such summons; and if the party so summoned neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding five pounds (*x*). 18 & 19 Vict. c. 120.

210. All savings and provisions in turnpike, railway, waterworks, improvement, and other Acts, saving and providing for the rights, powers, and authorities of the commissioners of sewers for any of the parts which shall be within the Metropolis as defined by this Act (*y*), shall, so far as the same are not inconsistent with the provisions of this Act, continue and be in force in favour of and with reference to the *Metropolitan Board of Works* (*z*) and the several district boards of works and vestries having the management of sewers under this Act, and in favour of the commissioners of sewers of the City of London (*a*), so far as such savings and provisions respectively are now applicable to them, or to any officer or person so continued by the said *Board*. Savings and provisions in local Acts applicable to commissioners of sewers to apply to county council and district boards and vestries.

Appeals.

211. Any person who deems himself aggrieved by any order of any vestry or district board in relation to the level of any building, or any order or act of any vestry or district board in relation to the construction, repair, alteration, stopping or filling up, or demolition of any building, sewer, drain, (*b*) . . . may, within seven days after (*c*) notice of any such order to the occupier of the premises affected thereby, or after such Act, appeal to the *Metropolitan Board of Works* (*d*) against the same; and all such appeals shall stand referred to the committee appointed by such *Board* for hearing appeals as Power to appeal against orders and acts of vestries and district boards in relation to construction of works.

(*x*) **Recovery of penalty.** See sec. 227, *post*.

(*y*) **Metropolitan commissioners of sewers.** See note to sec. 145, *ante*.

(*z*) **Metropolitan Board.** See note (*s*) on page 198.

(*a*) **Commissioners of sewers of the City.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.

(*b*) **Section 211.** The omitted words are repealed and replaced by the Pub. Hlth. (London) Act, 1891, secs. 37 (5), 41 (3), 43 (3), and 142, *post*.

(*c*) **Within seven days after,** i.e., exclusive of the day on which the notice is received; e.g., if the notice be given on the 1st, an appeal may be made up to any time on the 8th. *Robinson* v. *Waddington*, 13 Q. B. 753; 18 L. J. Q. B. 250; *Radcliffe* v. *Bartholomew* (1892), 1 Q. B. 161; 61 L. J. M. C. 63.

(*d*) **Appeal to Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*. Regulations as to appeals under this section, made in pursuance of sec. 202, *ante*, are contained in the standing orders of the County Council.

This section does not oust the jurisdiction of the Court of Chancery to interfere by injunction in case a vestry or district board exceed its authority. *Tinkler* v. *Wandsworth Dist. Bd.*, 2 De G. & J. 261; 27 L. J. Ch. 342. If an order of a vestry or district board is not objected to as provided by this section, its validity cannot be contested on a summons for not complying with it. The only question for the magistrate to decide is whether the order has in fact been made, and whether it has been disobeyed, and if he finds those facts in the affirmative he is bound to convict. *St. James and St. John, Clerkenwell* v. *Feary*, 24 Q. B. D. 703; 59 L. J. M. C. 82. This decision was, however, distinguished in a case under the Pub. Hlth. (London) Act, 1891, sec. 41 (3), *post*, where it was held that upon a summons for non-compliance with a notice under that Act, the magistrate had jurisdiction to inquire into the validity of the notice, notwithstanding the provisions for appeal to the County Council. *Fulham Vestry* v. *Solomon* *post*, p. 306.

18 & 19 Vict. c. 120.

herein provided; and such committee shall hear and determine all such appeals, and may order any costs of such appeals to be paid to or by the vestry or district board by or to the party appealing, and may, where they see fit, award any compensation in respect of any act done by any such vestry or district board in relation to the matters aforesaid; provided that no such compensation shall be awarded in respect of any such act which may have been done under any of the provisions of this Act on any default to comply with any such order as aforesaid, unless the appeal be lodged within seven days after notice of such order has been given to the occupier of the premises to which the same relates.

County council to appoint a committee for hearing appeals.

212. The *Metropolitan Board of Works* (*e*) shall appoint a committee for the purpose of hearing all such appeals as may be made to the said Board as aforesaid, which committee shall have power to hear and decide all such appeals (*f*); and the *Metropolitan Board of Works* (*e*) shall from time to time fill up any vacancy in such committee; and the chairman of the said *Board* shall, by virtue of his office of chairman, be a member of the said committee in addition to the members appointed by the said *Board*, and shall preside at all meetings of such committee at which he is present; and in case of a vacancy in the office of such chairman, or in his absence, some other member of the committee shall be chosen to preside; and all the powers of such committee may be exercised by any three of them; and any member of such committee may at any time resign his office.

213—214. [*Retiring allowances to officers of Met. Commissioners of Sewers. Compensation to officers of paving boards, &c. Spent.*]

Miscellaneous Clauses.

Where two or more persons are to do any act or pay any sum of money, vestry or district board may apportion the same.

215. Where, under the authority of this Act, two or more persons are or may be directed by any vestry or district board to do or join in doing any act, or to pay or join in paying any sum of money, costs, or expenses, or where any vestry or district board are authorised or think proper to permit two or more persons to join together in doing any act, or paying any sum of money, costs, or expenses, it shall be lawful for the vestry or district board to apportion the matter to be done, or the sum of money, costs, or expenses to be paid, between such persons, in such manner as the vestry or board consider just and reasonable.

Power to vestries and district boards to spread repayment of expenses over a period not exceeding twenty years.

216. In all cases where any vestry or district board is authorised to order any costs, charges, or expenses to be paid by private parties it shall be lawful for such vestry or district board to order and accept payment of such costs, charges, expenses, together with interest thereon after a rate not exceeding five pounds for the hundred by the year, by instalments, within such period, not exceeding twenty years in each case, as they may deter-

(*e*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*f*) **Powers of appeal committee.** The committee may allow or dismiss the appeal, or quash or confirm or vary the order appealed against. Met. Man. Amend. Act, 1862, sec. 29, *post*. As to the power of the committee to make improvement rates, &c., for expenses of works of private improvement executed by the metropolitan commissioners of sewers, see *ib.* sec. 30, *post*. The committee is also the statutory committee for hearing appeals to the County Council under the Public Hlth. (London) Act, 1891 (*ib.* sec. 126, *post*), and, by the Standing Orders of the County Council, it has to hear and decide all appeals made to the County Council under the present Act or any other Act of Parliament.

mine, the amount thereof to be recoverable in the same manner as other expenses are to be recovered under this Act (*g*). 18 & 19 Vict. c. 120.

217—219. [*Recovery of expenses from owner or occupier. Rep. and replaced by Met. Man. Amend. Act*, 1862, *secs.* 96 *and* 97, *post.*]

As to service of notices, &c., on county council and district boards and vestries.

220. Any summons or notice, or any writ or other process at law or in equity, or any other matter or thing whatsoever, required to be served upon the *Metropolitan Board of Works* (*h*) or any district board or vestry, may, unless herein otherwise provided, lawfully be served by delivering the same personally to the clerk of such respective board or vestry, or by leaving the same at the principal office of such board or vestry.

As to service of notices on owners and occupiers and other persons.

221. All notices by this Act required to be given to the owner or occupier of any land or premises, or other person, may be served personally on such owner, occupier, or person, or left with some inmate of his place of abode, and any notice required to be given to any such owner or occupier may, if there be no occupier, be affixed to some conspicuous part of the land or premises, and it shall not be necessary in any notice to any owner or occupier of any land or premises to name such owner or occupier: provided always, that where there is no occupier, and the owner of any such land or premises, and his place of abode or that of his agent is known to the vestry or board by or on behalf of whom such notice is given, or any of their officers, such notice shall be served on such owner personally, or left with some inmate of his place of abode, or transmitted to such owner through the post office, addressed to him at his place of abode or last known place of abode in the United Kingdom, or served on his agent as aforesaid.

Authentication of documents.

222. Every notice (*i*), demand, or like document given by or on behalf of the *Metropolitan Board of Works* (*h*), or any vestry or district board, under this Act, may be in writing (*k*), or print, or partly in writing and partly in print, and shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same is given (*l*).

Proof of debts in bankruptcy.

223. If any person against whom the *Metropolitan Board of Works* (*h*), or any district board or vestry, have any claim or demand, become bankrupt, or take the benefit of any Act for the relief of insolvent debtors, it shall be lawful for the clerk or collector, in all proceedings under the bankruptcy or insolvency, to represent such board or vestry, and act in their behalf in all respects as if such claim or demand were the claim or demand of the clerk or collector, and not of such board or vestry.

224. [*Tender of amends. Rep.* 57 *and* 58 *Vict. c.* 56 (*Statute Law Revision*). *See now the Public Authorities Protection Act*, 1893, *post, vol. ii.*]

(*g*) **Recoverable as other expenses.** See secs. 225 and 226, *post.*

(*h*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

(*i*) **Notice.** An offer of the Met. Bd. Wks. to pay a certain sum in satisfaction of a claim under sec. 68 of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), was held not to be a notice within this section. *Balls* v. *Met. Bd. Wks.*, 7 B. & S. 177; 35 L. J. Q. B. 101.

(*k*) **Writing** includes printing, lithography, photography, and other means of representing or reproducing words in visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*l*) **Signature of officer.** An offer to pay a certain sum in satisfaction of a claim under sec. 68 of the Lands Clauses Consolidation Act, 1845, signed by L., attorney, for S., solicitor of the Met. Bd. Wks., was held to be sufficiently signed. *Balls* v. *Met. Bd. Wks.*, *supra.*

18 & 19 Vict. c. 120.

Compensation, damage, and expenses, how to be ascertained and recovered.

225. In every case where the amount of any damage, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, or the amount of any damage, costs, or expenses is by this Act directed to be paid, and the method of ascertaining the amount, or enforcing the payment thereof is not provided for, such amount shall in case of dispute, be ascertained and determined by and shall be recovered before two justices (*m*); and the amount of any compensation (*n*), to be made under this Act by the said *Metropolitan Board* (*o*), or any vestry or district board, shall, unless herein otherwise provided, be settled, in case of dispute, by and shall be recovered before two justices, unless the amount of compensation claimed exceed fifty pounds, in which case the amount thereof shall be settled by arbitration, according to the provisions contained in the Lands Clauses Consolidation Act, 1845, which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration (*p*).

8 Vict. c. 18.

Method of proceeding before justices in questions of damages, &c.

226. Where the amount of any compensation, or of any damage, costs, or expenses, is to be determined by or to be recovered before two justices, it shall be lawful for any justice, upon the application of either party, to

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(*m*) **Recovery before justices.** Or the proceedings may be taken before a single metropolitan police magistrate. Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), sec. 14; Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 33. As to the time and manner of proceeding, see note to sec. 227, *post*.

It was held that the remedy given by this section was exclusive, and that therefore no action could be brought against an owner for expenses of paving a new street under sec. 105, *ante*. *St. Pancras Vestry* v. *Batterbury*, 2 C. B. (N. S.) 477; 26 L. J. C. P. 243. The general rule is that where a statute creates a liability and provides a means of enforcing it, there is no other remedy. *Ib.*; *Re Boor*, 40 Ch. D. at p. 576; *Lamplugh* v. *Norton*, 22 Q. B. D. 452; 58 L. J. Q. B. 279. For a case in which the remedy was held to be cumulative and not exclusive, see *Great Western Rly. Co.* v. *Sharman*, 61 L. J. Q. B. 600; 40 W. R. 643. Now, however, expenses incurred under sec. 105, *ante*, may be recovered either by action or summarily. Met. Man. Amend. Act, 1862, sec. 77, *post*.

Under sec. 121 of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), it was held that the determination of the justices need not be in writing, *Reg.* v. *Boyce Combe*, 32 L. J. M. C. 67. The determination of compensation by two justices under sec. 24 of that Act is not an order of the justices for the payment of money within sec. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), which limits the time for making complaint and laying information to six months, and they may hear and determine a question of disputed compensation, although the application be made more than six months after the land has been injuriously affected. *Reg.* v. *Edwards*, 13 Q. B. D. 586; 53 L. J. M. C. 149. Under the same Act, if justices refuse to entertain the matter, they can be compelled by *mandamus* to do so. *Reg.* v. *Kennedy* (1893), 1 Q. B. 533; 62 L. J. M. C. 168. The proper proceeding is by motion in the Queen's Bench Division for a prerogative writ of *mandamus*, as the action of *mandamus* will not lie against justices even with their consent. *Baxter* v. *Lon. Coun. Council*, 63 L. T. (N. S.) 767; 55 J. P. 391.

(*n*) **Compensation.** See secs. 69, 84, 86, and 120, as to the liability of vestries and district boards, and sec. 135, *ante*, as to the liability of the county council to pay compensation under this Act; and also note (*f*) to sec. 135 for general principles governing compensation. Under sec. 24 of the Lands Clauses Consolidation Act, 1845, the magistrates have no authority to inquire into the question of title, but only to settle the amount of compensation. *Reg.* v. *Edwards*, *supra*. An offer of a lump sum, to include all *costs*, in settlement of a claim for compensation under sec. 68 of that Act, after proceedings for its recovery have been commenced, is invalid. *Balls* v. *Met. Bd. Wks.*, 7 B. & S. 177; 35 L. J. Q. B. 101.

(*o*) **Met. Bd.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*p*) **Arbitration.** Provisions as to arbitration are contained in secs. 25—27 and 29—37 of the Lands Clauses Consolid. Act, 1845. The provisions of the Arbitration Act, 1889 (52 & 53 Vict. c. 49), apply to arbitrations under all statutes, whether passed before or after its commencement, in so far as the Act is not inconsistent with them. *Ib.* sec. 24.

summon the other party to appear before two justices, at a time and place to be named in such summons; and upon the appearance of such parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such two justices to hear and determine the matter (*q*), and for that purpose to examine such parties, or any of them, and their witnesses, on oath, and make such order, as well as to costs as otherwise, as to them may seem just. 18 & 19 Vict. c. 120.

227. Every penalty or forfeiture (*r*), imposed by this Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings (*s*), Penalties, &c., to be recovered as provided by 11 & 12 Vict. c. 43.

(*q*) **Hear and determine.** Where the owner of houses was summoned for his share of the estimated expenses of paving a "new street," and the magistrate, after hearing the evidence, dismissed the summons on the ground that the street was not a "new street," the Court held (Erle, J., dissenting) that he had heard and determined the case, and that the Court could not interfere. *Reg.* v. *Dayman*, 26 L. J. M. C. 128; 22 J. P. 39. As to how far the decision of a magistrate is final, see that and other cases cited in note (*x*) to sec. 112 of the Met. Man. Amend. Act, 1862, *post*.

(*r*) **Every penalty, &c.** The provisions of this section are extended by sec. 104 of the Met. Man. Amend. Act, 1862, *post*, p. 263, to any damages, costs, or expenses payable or recoverable under that or the present Act, the recovery whereof is not otherwise provided for. Such damages, costs, and expenses are deemed to be a civil debt, and are recoverable on complaint. A warrant cannot be issued for the apprehension of any person for failing to appear to answer such complaint, and an order of a court of summary jurisdiction for their payment cannot be enforced by imprisonment, except after proof of means on a judgment summons, in the manner provided for ordinary debts under the Debtors Act, 1869 (32 & 33 Vict. c. 62), sec. 5. Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), secs. 6 and 35. See also *Reg.* v. *Paget*, 8 Q. B. D. 151; 51 L. J. M. C. 9; *Reg.* v. *Kerswill* (1895) 1 Q. B. 1; 64 L. J. M. C. 70; and *Seaman* v. *Burley*, *infra*, as to the distinction between criminal and civil matters before courts of summary jurisdiction.

(*s*) **Summary proceedings.** Where the person proceeded against is alleged to have committed an offence for which he is liable upon summary conviction to be imprisoned or fined, or otherwise punished, proceedings are commenced by laying an information. Where such person is liable to have an order made upon him to pay money or to do some act which he has refused or neglected to do, proceedings are commenced by making a complaint, either verbally or in writing, to a justice of the peace or metropolitan police magistrate. Summary Jurisdiction Act, 1848, secs. 1, 2, 8, and 29.

Limitation of time.—In all cases where no time is specially limited, such complaint must be made or information laid within six calendar months from the time when the matter of it arose. *Ib.* sec. 11. No person is liable for any penalty or forfeiture under the Met. Man. Acts, or any byelaw made thereunder, unless complaint is made before a justice within six calendar months next after the commission or discovery of the offence. Met. Man. Amend. Act, 1862, sec. 107, *post*.

In calculating the period of six months, the day on which the matter of complaint arises is excluded, but the day on which the complaint is made or the information laid is included. *Radcliffe* v. *Bartholomew* (1892), 1 Q. B. 161; 61 L. J. M. C. 63. *Robinson* v. *Waddington*, 13 Q. B. 753; 18 L. J. Q. B. 250. Where buildings were erected contrary to the provisions of a local Act, it was held that the period of six months began to run from the completion of the buildings. *Morant* v. *Taylor*, 1 Ex. D. 188; 45 L. J. M. C. 78. In proceedings for building beyond the general building line, the cause of complaint arises as soon as the building is so far erected as to show that it projects beyond the general line of buildings. *Brutton* v. *St. George's, Hanover Square*, L. R. 13 Eq. 339; 41 L. J. Ch. 134. *London County Council* v. *Cross*, 61 L. J. M. C. 160; 66 L. T. (N. S.) 731. And see *Coggins* v. *Bennett*, 2 C. P. D. 568; and *Bovill* v. *Gibbs*, 51 J. P. 485. Where expenses are to be recovered in the manner directed by the Summary Jurisdiction Acts, the six months are reckoned from the time when the demand is made, and not from the time when the expenses are incurred. *Labalmondiere* v. *Addison*, 1 E. & E. 41; 28 L. J. M. C. 25. In proceedings for the recovery of sewer or paving expenses, the six months' limit runs from the date of demand and not from the date of apportionment. *Marr* v. *Greenwich Dist. Bd.*, 44 J. P. 424. Where the amount is payable by instalments, and any instalment becomes overdue, the six months run from the demand for such instalment. *Prescott* v. *Nicholson*, 53 J. P. 597; 60 L. T. (N. S.) 563. Under the Pub. Hlth. Act, 1848, where a notice of apportionment was invalid, and a second and

18 & 19 Vict. c. 120.

before any justice in manner provided by the Summary Jurisdiction Act, 1848.

Damages to be made good in addition to penalty.

228. If, through any act, neglect, or default on account whereof any person has incurred any penalty imposed by this Act, any damage to the property of the said *Metropolitan Board* (*t*), or any vestry or district board, has been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damage, in case of dispute, shall be determined by the justices by whom the party incurring such penalty is convicted, and the payment of the amount of such damage may be enforced in all respects as such penalty.

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valid notice was served, it was held that six months' limit did not begin to run until the second notice. *Sykes* v. *Huddersfield* (*Mayor, &c., of*), 53 J. P. 614. See also *Grece* v. *Hunt*, 2 Q. B. D. 389; 46 L. J. M. C. 202; *Simcox* v. *Handsworth Loc. Bd.*, 8 Q. B. D. 39; 51 L. J. Q. B. 168; *Wortley* v. *St. Mary, Islington*, 51 J. P. 165; and *Reg.* v. *Slade, Ex parte Saunders* (No. 2), *post*, p. 284. As to the limit of time where the offence is a continuing offence, see *London County Council* v. *Worley* (1894), 2 Q. B. 826; 63 L. J. M. C. 218; and cases there cited. The continuance of a building at a prohibited height after notice is a continuing offence. *Ib.*

Costs may be ordered to be paid by the informant or complainant if the information or complaint is dismissed, and by the defendant if he is convicted or an order is made on him. Summy. Juris. Act, 1848, sec. 18.

Appeal to quarter sessions.—An appeal from a court of summary jurisdiction to quarter sessions is not a matter of common right. It must be given by express enactment. The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), sec. 19, enacts that where a person is adjudged by a court of summary jurisdiction to be imprisoned without the option of a fine, and such person has not pleaded guilty or admitted the truth of the information or complaint, he has the right of appeal to quarter sessions. And by secs. 231 and 232 of the present Act, *post*, any person aggrieved by the adjudication or determination of a justice respecting any penalty or forfeiture under the provisions of this Act, may appeal to quarter sessions. The appeal must be to the next practicable court of general or quarter sessions, holden not less than fifteen days after the decision is given. The appellant must give notice of appeal in writing, within seven days after the decision, to the other party and to the clerk of the court of summary jurisdiction, and within three days after the day on which he gives notice of appeal, must enter into recognizances or give security to prosecute the appeal. Summary Jurisdiction Act, 1879, sec. 31, as amended by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43), sec. 6.

Appeal to High Court.—Any party to the proceedings, or aggrieved by the decision, who desires to question the conviction or determination of a court of summary jurisdiction on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court in writing within seven clear days after such decision to state a case for the opinion of the High Court. If the court decline to do so, such party may apply to the High Court for an order requiring the case to be stated. Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), sec. 1; Summ. Juris. Act, 1879, sec. 33. This resort to a superior court operates as an abandonment of the right of appeal to quarter sessions. Summ. Juris. Act, 1857, sec. 14.

Where an appeal is made to quarter sessions their decision is final and cannot be reviewed by any court whatever without their consent, though they may, if they think fit, state a case on any point of law for the decision of the High Court. Archbold's "Quarter Sessions Practice," 4th ed., p. 887, *et seq.* At any time, however, after notice of appeal to quarter sessions the parties may by consent and by order of a judge of the High Court state the facts of the case in the form of a special case for the opinion of the High Court, and agree that judgment in conformity with the decision of such Court may be entered on motion by either party at the sessions next or next but one after such decision. Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), sec. 11.

All appeals from the justices or quarter sessions to the High Court are determined by the Divisional Court, whose decision is final, unless leave to appeal is given by that Court or by the Court of Appeal. Judicature Act, 1873 (36 & 37 Vict. c. 66), sec. 45; Judicature Act, 1894 (57 & 58 Vict. c. 16), sec. 1 (5). In any criminal cause or matter the decision of the Divisional Court is final and without appeal to the Court of Appeal. *Payne* v. *Wright* (No. 2), *post*, p. 464. *Seaman* v. *Burley* (1896), 2 Q. B. 345; 65 L. J. M. C. 208, and see cases there cited.

(*t*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

18 & 19 Vict. c. 120.

Transient offenders.

229. It shall be lawful for any officer or servant of the said *Metropolitan Board* (*u*), or any vestry or district board, and for any police constable, and all persons called by him to his assistance, to seize and detain any person who has committed any offence against the provisions of this Act, or any byelaw made in pursuance thereof, and whose name and residence shall be unknown to such officer or servant or public constable, and convey him with all convenient despatch before some justice, without any warrant or other authority than this Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Proceedings not to be quashed for want of form.

230. No Act, order, or proceeding in pursuance of this Act, or in relation to the execution thereof, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari (*x*) or otherwise into any of the superior courts, except as herein specially provided.

Parties allowed to appeal to quarter sessions.

231. If any person feel aggrieved by any adjudication or determination of any justice or justices with respect to any penalty or forfeiture (*y*) under the provisions of this Act, such person may appeal to the general or quarter sessions (*z*) . . .

Court to make such order as they think reasonable.

232. At the general or quarter sessions for which such notice is given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture (*a*) . . .

233—234. [*Penalties to be sued for within three months. Application of penalties. Rep. and replaced by Met. Man. Amend. Act*, 1862, *secs.* 107 *and* 105, *post.*]

Special Provisions and Savings.

Provision for joint action of vestries, and elections out of vestries under local Acts.

235. Where the vestries of any parishes mentioned in either of the schedules (A.) and (B.) to this Act now act jointly or in union, or exercise

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(*u*) **Metropolitan Board.** See note (*t*) on page 204.

(*x*) **Certiorari.** Where the proceedings show an entire absence of jurisdiction, this section does not apply, and a writ of *certiorari* will be granted. *Reg.* v. *Met. Bd. Wks.*, 27 L. J. Q. B. 5; *Broughton Loc. Bd., re*, 12 L. T. (N. S.) 310; 29 J. P. 324; *Reg.* v. *Wood*, 5 E. & B. 49; S. C. nom. *Reg.* v. *Rose*, 24 L. J. M. C. 130; *Colonial Bank of Australia* v. *Willan*, L. R. 5 P. C. 417; 43 L. J. P. C. 39; *Ex parte Bradlaugh*, 3 Q. B. D. 509; 47 L. J. M. C. 105. Under a similar provision of the repealed Municipal Corporations Act, 1835 (5 & 6 Will. 4 c. 76), sec. 132, it was held that, by consent of the parties, a case might be stated by a court of quarter sessions for the opinion of the high court, though the writ of *certiorari* had been taken away by that section. *Reg.* v. *Dickenson*, 7 E. & B. 831; 26 L. J. M. C. 204. See Paley's "Summary Convictions," p. 348, *et seq.*, and the Crown Office Rules, Nos. 28—42, as to the law and practice of removal by *certiorari*.

(*y*) **Penalty or forfeiture.** An order of a justice directing the demolition of a building under sec. 75 of the Met. Man. Amend. Act, 1862, was held not to be an adjudication with respect to a "penalty or forfeiture" within this section, and could not be appealed against to quarter sessions. *Reg.* v. *Middlesex JJ., re Elsdon*, 9 Q. B. D. 41; 51 L. J. M. C. 94. That section is repealed, and other provisions are substituted by the London Building Act, 1894, secs. 22, 151—153, and 215, *post*, which, however, gives no appeal to quarter sessions.

(*z*) **Appeal to quarter sessions.** For the manner and time of appealing, see note to sec. 227, *ante*. Where the matter is a criminal one there is no appeal unless there is a conviction. *Reg.* v. *London Justices, Ex parte Fulham Vestry*, 25 Q. B. D. 357; 59 L. J. M. C. 146. The remainder of this section is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

(*a*) **Section 232.** The remainder of this section is repealed by the Summary Jurisdiction Act, 1884.

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any powers or privileges jointly or in union, or elect guardians, directors, trustees, or other persons whomsoever whose offices are not expressed to be determined by this Act for any joint purposes, the vestries of such parishes elected under this Act may act jointly or in union, and shall have the like powers and privileges jointly or in union, and elect for such joint purposes in like manner and with the like effect; and where in any of the said parishes any guardians, directors, trustees, or other persons whosoever whose offices are not expressed to be determined by this Act are now by law elected out of the vestry of any such parish, such guardians, directors, trustees, or other persons as aforesaid may be elected out of or from the vestrymen and persons who . . . are eligible as vestrymen for the same parish; and the office of no such guardian, director, trustee or other person shall be determined by reason of his ceasing to be a vestryman in consequence of the passing of this Act; but every such guardian, director, trustee, or other person shall continue in office until such time as he would otherwise have ceased to hold his office.

236. [*Agreement of August 10th, 1854, between the London and North Western Ry. Co. and certain paving commissioners, relating to the paving, &c., of certain streets in St. Pancras confirmed, and maintenance of the roads vested in the St. Pancras Vestry.*]

Special provision as to powers of commissioners acting under 5 & 6 Vict. ch. xlviii. as to paving Ely Place, &c.

237. This Act shall not divest the commissioners under an Act of the session holden in the fifth and sixth years of Her Majesty, chapter forty-eight (local), "For paving, lighting, watching, cleansing, and improving *Ely Place* and *Ely Mews, Holborn*, in the county of *Middlesex*" (*a*), of any of the powers or property vested in them under that Act, nor shall any of the provisions of this Act in relation to the paving, lighting, watering, and cleansing of streets apply to the parts within the limits of the said local Act, nor shall such parts be assessed or rated under this Act for defraying any expenses incurred by the district board for the *Holborn* district in relation to paving, lighting, watering, and cleansing; but such parts shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by the said district board, and for expenses incurred by the *Metropolitan Board of Works* (*d*), and towards any sums required to be raised by such board under this Act, in like manner as other parts within the said district.

Special provision as to parish of Woolwich.

238. Notwithstanding anything in this Act contained to the contrary, the provisions of this Act shall extend and apply to the parish of *Woolwich* (*b*) only to the extent and in manner hereinafter mentioned:

(*a*) **Ely Place** is part of the Liberty of Saffron Hill, Hatton Garden, and Ely Rents, and is by schedule (B), *post*, included in the Holborn District. It was held that the commissioners for paving the Liberty of Saffron Hill had no authority to enter Ely Place for the purpose of paving it, under 5 Will. 4, ch. xviii., sec. 44. *Paul* v. *James*, 1 G. & D. 316.

(*b*) **Woolwich.** By the Pub. Hlth. Supplemental Act, 1852 (15 & 16 Vict. c. 69), Woolwich was constituted a sanitary district governed by a Local Board under the Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), repealed and replaced by the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55). That and the amending Public Hlth. Acts do not apply to the Metropolis, save as otherwise expressly provided. Pub. Hlth. Act, 1875, secs. 2 and 4. But certain of their provisions are extended to Woolwich, by sec. 102 and sched. 2 of the Pub. Hlth. (London) Act, 1891, *post*, except so far as they are not superseded by it. The Local Board is the local authority for the parish of Woolwich, under the Pub. Hlth (London) Act, 1891, sec. 99, *post*, and the London Building Act,

(that is to say,) (*c*) . . . The said *Metropolitan Board* (*d*) shall have and perform, within and in relation to the said parish, all the powers and duties vested in them under this Act, in like manner as within and in relation to other parishes mentioned in the said schedule (A.), save that the said local board shall be subject to all orders of the said *Metropolitan Board* (*d*) in relation to sewerage and otherwise (*c*), . . . in all respects as the vestries of other parishes in the said schedule (A.) are subject to the same, in lieu of the vestry of the said parish (*c*). 18 & 19 Vict. c. 120.

Special provisions as to enclosed gardens in squares, &c.

239. Where any enclosed garden or ornamental ground is vested in or under the maintenance or management of any commissioners or other body, for the use of the inhabitants of any square, crescent, circus, street, or place, surrounding or adjoining such garden or ground, and the powers of such commissioners or other body do not extend beyond such garden or ground, and such square, crescent, circus, street, or place, or any adjoining street, way, or passage, so far as the same may abut upon any part of any house, shop, building, or tenement situate in or fronting any such square, crescent, circus, street, or place, nothing in this Act shall divest such commissioners or body of any property in such garden or ground, or in any railing or footway bounding the same, or of any duties, powers, or authorities now or hereafter vested in any such commissioners or other body, for or in relation to the paving, watering, cleansing, improving, or regulating of such enclosed garden or ornamental ground, or in relation to the railing or footway bounding the same, or to levy rates for defraying any expenses incurred in the execution of such duties or powers; and where the maintenance or management of any enclosed garden or ornamental ground is vested in any commissioners or other body, for the use or benefit of the inhabitants of any square, crescent, circus, street, or place surrounding or adjoining the same, who are liable to be assessed for the maintenance thereof, and the powers of such commissioners or other body extend beyond such enclosed garden or ornamental ground, and such square, crescent, circus, street, or place, or such adjoining street, way, or passage as aforesaid, the maintenance and management of such enclosed garden or ornamental ground shall be vested in a committee, consisting of not more than nine nor fewer than three of such inhabitants, and such committee shall be appointed annually in the first week in *June* by such inhabitants; and the vestry or board shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of the houses or buildings the occupiers whereof are now liable to be assessed for the same purpose: Provided always, that where any such rate which may now

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1894. Woolwich sends one member to Parliament (Redistribution of Seats Act, 1885 (48 & 49 Vict. c. 23), sched. 4), and two representatives to the London County Council. Loc. Govt. Act, 1888, sec. 40 (1) (8), *ante*.

(*c*) **Section 238.** The words omitted from sec. 238 provided for the representation of Woolwich on the Metropolitan Board, and for payments of the precepts of that Board, and were repealed by 55 & 56 Vict. c. 19, and 56 & 57 Vict. c. 54, Statute Law Revision.

(*d*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, 40 (8), *ante*.

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be levied for such purpose is limited in amount the rate to be levied under this provision shall be subject to the like limit (*f*).

Saving of powers and property of commissioners under 14 & 15 Vict. c. 95.

240. This Act shall not divest the commissioners for carrying into execution "The Crown Estate Paving Act, 1851" (*g*), and the subsisting provisions of the Acts therein recited, or the commissioners of works, of any of the powers, duties, authorities, or property vested in them respectively under the said Acts; and nothing in this Act shall extend to authorise or empower any vestry or district board to exercise any power or control whatsoever in respect of paving, maintaining, lighting, watering, cleansing, and regulating any streets or places in the neighbourhood of the Houses of Parliament, delineated on a plan marked E., referred to by "The Crown Estate Paving Act, 1851," or any portion of the district now under the management of the commissioners for carrying into execution the said Crown Estate Paving Act, and the subsisting provisions aforesaid, or to exercise any power or control whatsoever in or over any of the gardens or pleasure grounds the management whereof is now or may for the time being be vested in such last-mentioned commissioners; nor shall any such street or place, or any portion of such district, as aforesaid, be assessed or rated under this Act for defraying any expenses incurred by any vestry or district board in relation to paving, lighting, watering, or cleansing, but such streets, places, and district shall be subject to all the provisions of this Act relating to sewerage and house drainage, and to be assessed or rated for sewerage expenses incurred by any such vestry or board, and for expenses incurred by the *Metropolitan Board of Works* (*k*) and towards any sums required to be raised by such *Board* under this Act as by this Act provided.

Saving of the rights of the commissioners of works.

241. Nothing in this Act shall divest the commissioners of works of any power or property now or which for the time being may be vested in them; and nothing in this Act shall extend to authorise or empower any vestry or district board to exercise any power or control whatsoever in or over any of the royal or public parks, gardens, or pleasure grounds, the management whereof is now or may be for the time vested in such commissioners; and nothing in this Act shall abridge, alter, or affect any right, power, exemption, or remedy of the Queen's most excellent Majesty, or the said commissioners, in, over, or in relation to the possessions of the Crown or of the public.

Saving of powers of City commissioners of sewers over certain parts of parishes in schedule (B.)

242. Nothing in this Act shall divest the commissioners of sewers of the City of *London* (*h*) of any powers or property vested in them in relation to such parts of any of the parishes mentioned in schedule (B.) to this Act as are within the City of *London* (*i*), nor shall such parts

(*f*) **Gardens vested in commissioners.** See *Reg.* v. *St. George's, Hanover Square*, *ante*, p. 186.

(*g*) **The Crown Estate Paving Act, 1851,** transferred the duties of paving, lighting, watering, and cleansing parts of the Crown Estate in the district of Regent's Park, and certain streets and places in Westminster, and jurisdiction over certain other places in Westminster, to the Commissioners of Works.

(*h*) **Commissioners of sewers of the City.** See note to sec. 41 (4) of the Loc. Govt. Act, 1888, *ante*.

(*i*) **Parts within City.** This section applies to parishes which are partly within and partly without the City, and where the powers exercised under this Act by the County Council are in conflict with those of the commissioners of sewers of the City, the powers of the latter are so far suspended. Per *Erle*, J., in *Daw* v. *Met. Bd. Wks.*, 31 L. J. C. P. 223; 26 J. P. 807.

be subject to be rated or assessed by any district board, but shall be subject to all the powers of the *Metropolitan Board of Works* (*k*) as other places in the City of London. 18 & 19 Vict. c. 120.

243. [*Saving rights of Metropolitan Sewage Manure Co., acting under 9 & 10 Vict. ch. cccxcviii., and 10 & 11 Vict. ch. cxxxviii. Repealed 55 & 56 Vict. c. 19 (Statute Law Revision).*]

244. [*Saving rights of commissioners or trustees of turnpike roads. Turnpike roads no longer exist in the Metropolis. See the Highways and Loco. Amend. Act, 1878, sec. 13, and note thereto, post, vol. ii. tit. "Highways."*]

Saving for metropolitan police commissioners.

245. Nothing in this Act shall interfere with the powers given by law to the commissioners of the police of the Metropolis (*l*).

246. [*Rep. 55 & 56 Vict. c. 19 (Statute Law Revision).*]

Repeal of Acts inconsistent with this Act.

247. All Acts of Parliament in force in any parish or place to which this Act extends, or in any part of such parish or place, shall, so far as the same are inconsistent with the provisions of this Act, be repealed (*m*) as regards such parish or place, or such part thereof, notwithstanding any provisions of this Act continuing and transferring respectively to vestries of parishes and transferring to district boards any duties, powers, or authorities now vested in vestries, commissioners, or other bodies.

In case of conflict with the provisions of this Act, provisions of local Acts may be varied by Order in Council on petition of boards or vestries.

248. Upon the petition of the *Metropolitan Board of Works* (*k*), or of any district board or vestry, representing to Her Majesty in Council that by reason of the provisions of any local Act of Parliament relating to any district or parish, or any part thereof respectively, difficulties have arisen in the execution of this Act and of such local Act or either of them, and praying for a suspension or alteration of all or any of the provisions of such local Act, or for the establishment of other provisions in lieu thereof under this enactment, it shall be lawful for Her Majesty, by Order in Council, to suspend or alter all or any of the provisions of such local Act, and to make other provisions in relation to the matters thereof as Her Majesty, with the advice of her Privy Council, may think necessary under the circumstances of the case; and every such Order in Council shall be laid before both Houses of Parliament within one month after the making thereof, if Parliament be then sitting, or, if Parliament be not sitting, then within one month after the next meeting of Parliament, and shall be published in the London Gazette: provided always, that no such Order in Council shall remain in force beyond the term of one year from the making thereof.

249. [*Power to extend Act to adjoining parishes. Rep. 55 & 56 Vict. c. 19 (Statute Law Revision).*]

(*k*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*l*) **Metropolitan commissioners of police.** See note to sec. 93 (1) of the Loc. Govt. Act, 1888, *ante*.

(*m*) **Inconsistent Acts repealed.** See note to sec. 126 of the Loc. Govt. Act, 1888, *ante*, as to the interpretation of conflicting provisions in public and special Acts. The general provisions of this section do not override special powers vested in a company for a special object by an earlier Act. *London and Blackwall Rly. Co.* v. *Limehouse Dist. Bd.*, 3 K. & J. 123; 26 L. J. Ch. 164.

18 & 19 Vict. c. 120.

Interpretation and Commencement of Act.

Interpretation of terms: "the Metropolis:" "the City of London:" "Parish:" "Overseers of the poor:" "Rates:" "Owner:"

250. In the construction of this Act "the Metropolis" shall be deemed to include the City of London, and the parishes and places mentioned in the schedules (A.), (B.), and (C.), to this Act (*n*); "the City of London" shall be deemed to include all parts now within the jurisdiction of the commissioners of sewers for the City of London (*o*); and the word "parish" shall include (*p*) any place mentioned in schedule (A.) to this Act, and any place or combination of places mentioned in schedule (B.) to this Act, for which one or more member or members is or are to be elected to any district board; the expression "the overseers of the poor" (*q*) shall include any persons authorised to make and collect or cause to be collected the rate for the relief of the poor in any parish; any expression referring to any rate or rates raised under this Act by the *Metropolitan Board of Works* (*r*) or any vestry or district board shall mean (*p*) the sums and rates authorised to be raised by the said *Metropolitan Board* (*r*), and the sums authorised to be raised by any vestry and district board respectively; the word "owner" (*s*) shall (except for the purpose of the

(*n*) **The Metropolis**, as here defined, now constitutes the administrative county of London. Loc. Govt. Act, 1888, secs. 40 (1) and 100, *ante*.

(*o*) **Jurisdiction of City commissioners of sewers.** The jurisdiction of these commissioners extends to the whole of the City of London, i.e., the "City of London and the liberties thereof, including such parts of Holborn, the Minories, and Aldersgate-street as are or have been usually treated as being within the liberties of the City, and the courts and alleys leading into the same, or communicating therewith, and also the north side of Eldon-street, formerly called Brook-row, Moorfields, and the courts and alleys leading into the same or communicating therewith, and all the precincts and places within the City of London and liberties thereof." City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii.), sec. 262. As to the constitution and powers of these commissioners, see note to sec. 41 (4) of the Loc. Govt. Act, 1888, *ante*.

(*p*) **Include . . . mean.** The words "shall include," mean, "shall have the following meaning, in addition to the popular meaning" (*per* Brett, M. R., in *Portsmouth Corporation* v. *Smith*, 13 Q. B. D. 184, at p. 195; 53 L. J. Q. B. 92):—Where the word "includes" is used the definition in the Act includes the ordinary meaning and adds something to it, but where the word "means," and not the word "includes," is used, the definition is a hard and fast one, and no other meaning can be assigned to the word defined than is put down in the definition. See judgment of Lord Esher, M. R., in *Gough* v. *Gough* (1891), 2 Q. B. 665; 60 L. J. Q. B. 726.

(*q*) **Overseers.** In a parish where the guardians collected the poor rate, a rate collected by the guardians on a precept addressed to the overseers was held to be valid. *Christie* v. *Guardians of St. Luke's, Chelsea*, 27 L. J. M. C. 153; 22 J. P. 496.

(*r*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*s*) **Owner.** A person having a strip of land, about four inches wide and 265 feet in length, abutting upon the side of a "new street," on which he had erected a fence, is an "owner" within the meaning of this section. *Williams* v. *Wandsworth Bd. Wks.*, 13 Q. B. D. 211; 53 L. J. M. C. 187. So is the lessee of building land, held at a peppercorn rent rising subsequently to a fixed sum (*Poplar Dist. Bd.* v. *Love* 29 L. T. (N. S.) 915; 38 J. P. 246); but where the lessee of premises, not let at a rackrent, sub-lets them for the whole term less a few days, the rent reserved and the covenants being the same as in the original lease, the sub-lessee is the owner (*Truman, Hanbury & Co.* v. *Kerslake* (1894), 2 Q. B. 774; 63 L. J. M. C. 222); and where a tenant at a rent higher than a rack-rent, sub-let to another person at a still higher rent, he was held not to be the owner. *Walford* v. *Hackney Dist. Bd.*, 15 R. 10; 43 W. R. 110. The Ecclesiastical Commissioners, to whom land had been conveyed under the Church Building Acts, a church being subsequently erected on it, and the freehold site of the church then becoming vested in the incumbent by virtue of sec. 13 of the Church Bldg. Acts Amend. Act, 1845 (8 & 9 Vict. c. 70), were held not to be owners (*Plumstead Dist. Bd.* v. *Ecclesiastical Commissioners* (1891), 2 Q. B. 361; 64 L. T. (N. S.) 830); and *semble*, that commissioners to whom land is conveyed for building additional churches, are not owners within the meaning of this section (*Angell* v. *Paddington Vestry*, L. R. 3 Q. B. 714; 37 L. J. M. C. 171); but trustees of an unconsecrated chapel are. *Caiger* v. *St. Mary's, Islington*, 50 L. J. M. C. 59; 45 J. P. 570; *Wright* v. *Ingle*, 16 Q. B. D. 379; 55 L. J. M. C. 17. The legal owner

provision of this Act requiring notice to be served on owners or reputed owners of land (*t*), before application to one of Her Majesty's principal Secretaries of State for his consent to exercise powers of taking land, or any right or easement in or over land, compulsorily,) mean the person for the time being receiving the rack-rent (*u*) of the lands or premises in connexion with which the said word is used, whether on his own account or as agent (*x*) or trustee (*y*) for any other person, or who would so receive the same if such lands or premises were let at a rack-rent; the word "street" (*z*) shall apply to and include any highway (*a*) (except the

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"Street."

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of a garden which such legal owner holds in trust for use of the inhabitants of the neighbouring houses, is an owner within the section (*Holland* (*Lady*) v. *Kensington Vestry*, L. R. 2 C. P. 565; 36 L. J. M. C. 105); so is a vestry which had acquired, under the Metropolis Open Spaces Act, 1877 (40 & 41 Vict. c. 34), *post*, vol. ii., the residue of the lease of a piece of land for a public garden. *St. Mary, Islington* v. *Cobbett* (1895), 1 Q. B. 369; 64 L. J. M. C. 36. A cemetery company, though their ground be consecrated, are "owners" of their land (*St. Giles, Camberwell* v. *The London Cemetery Co.* (1894), 1 Q. B. 699; 63 L. J. M. C. 74); and so are the London School Board of their schools, (*London School Board* v. *St. Mary, Islington*, 1 Q. B. D. 65; 45 L. J. M. C 1); but the Thames Conservators, under the Thames Conservancy Act, are owners of the soil and foreshore of the river for certain specified purposes only, and are not owners for the purposes of sec. 4 of the Pub. Hlth. (London) Act, 1891, *post*. *Thames Conservators* v. *London Port Sanitary Authority* (1894), 1 Q. B. 647; 63 L. J. M. C. 121.

A similar definition of "owner" under the Public Health Acts, 1848 and 1875, has been held to include the trustees of a national school (*Bowditch* v. *Wakefield Loc. Bd.*, L. R. 6 Q. B. 567; 40 L. J. M. C. 214; *Hornsey Dist. Council* v. *Smith* (1897), 1 Ch. 843; 66 L. J. Ch. 476); and the lord of the manor in whom the soil of a turf common was vested, subject, as regards the surface, to certain charitable trusts (*Meyrick* v. *Att.-Genl.* (1894), 3 Ch. 209; 63 L. J. Ch. 657); but not a person who has merely the benefit of a covenant restricting the use of premises (*Tendring Union* (*Guardians*) v. *Dowton* (1891), 3 Ch. 265; 61 L. J. Ch. 82); nor a receiver appointed by the court. *Bacup Corporation* v. *Smith*, 44 Ch. D. 395; 59 L. J. Ch. 518.

The lessee of lands under a building lease for 999 years, at a ground-rent of £26, on which no buildings had been erected, was held to be the "owner" within the meaning of a similar definition in a local Act. *St. Helen's Corporation* v. *Riley*, 47 J. P. 471.

Compare the definition of "owner" in the present section with the definition of "owner" in the London Building Act, 1894, sec. 5 (29), *post*, and see cases cited in note (*q*) thereto.

(*t*) **Notice on owners.** See secs. 152 and 153, *ante*.

(*u*) **Rack-rent** is a rent of the full annual value of the tenement, or near it. II. Broom and Had. Com. 54. See also the definition of "rack-rent" in the Pub. Hlth. (London) Act, 1891, sec. 141, *post*.

(*x*) **As agent.** A similar definition in a local Act was held to include an agent employed to collect the rents of property charged with an apportionment of paving expenses, and to make him liable to be called upon to pay, whether he had money in his possession or not. *St. Helens* (*Mayor, &c., of*) v. *Kirkham*, 16 Q. B. D. 403; 50 J. P. 647.

(*y*) **Trustee.** See *Lever, In re, Cordwell* v. *Lever*, *post*, p. 354.

(*z*) **Street.** The word "street" also applies to and includes any mews or a part thereof. Met. Man. Amend. Act, 1862, sec. 112, *post*. The definition of "street" in this section is almost identical with that contained in sec. 4 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55). In a case under that Act, Brett, M. R., said: "The interpretation clause includes under the word 'street' things which no one in ordinary parlance would call streets, for instance, a highway which has not a house on either side. But where there is a certain number of houses on each side of a thoroughfare or roadway, everybody, without the assistance of an Act of Parliament would call that thing a street, and call it nothing else." *Portsmouth Corporation* v. *Smith*, 13 Q. B. D. 184, at p. 195; 53 L. J. Q. B. 92. A country lane, without a house on either side, though found by a jury not to be a street in the popular sense, was held to be a "street" within the meaning of the Act. *Ib.* This case was subsequently followed in *Fenwick* v. *Croydon Rural Sanitary Authority* (1891), 2 Q. B. 216; 60 L. J. M. C. 161; and *Ellis* v. *London Coun. Counc.*, 67 L. T. (N. S.) 558; 57 J. P. 24. In the latter case, Pollock, B., said: "It is not, and cannot be treated as, a mere question of fact, because where the definition that is given in the statute is clear, and the facts bring a road or street within that definition, it then becomes a question of law." A strip of

18 & 19 Vict. c. 120.

"Drain:"

carriageway of any turnpike road) (*b*), and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage (*c*), whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage; the word "drain" (*d*) shall mean and include any drain of and used for the drainage of

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land lying between the footway and carriageway of a public road, and used by the occupants of the houses, who paid a small rent for its use to the lord of the manor, but over which there was a public right of way subject to such use, was held not to form part of a "street" within the present section. *Le Neve* v. *Mile End Old Town Vestry*, 8 E. & B. 1054; 27 L. J. Q. B. 208. A road made by a builder across his freehold land, used by the public, and lighted, but not taken over, by the vestry, was held to come within the definition of "street." *St. John's, Hampstead* v. *Hoopel*, 15 Q. B. D. 652; 54 L. J. M. C. 147.

See also cases cited in note (*f*) to the London Building Act, 1894, *post*, p. 392.

For definition and meaning of "new street," see Met. Man. Amend. Act, 1862, sec. 112, *post*, p. 264, and note (*x*) thereto.

(*a*) **Highway.** See note (*y*) to sec. 96, *ante*, as to what constitutes a highway.

(*b*) **Turnpike roads** no longer exist in the Metropolis. See Highways and Loco. Amend. Act, 1878, sec. 13, and note thereto, *post*, vol. ii. tit. "*Highways*."

(*c*) **Passage.** Footways at the backs of houses, intended to afford access to the ash-pits and privies, come within the meaning of "street" as defined by sec. 4 of the Pub. Hlth. Act, 1875. *Reg.* v. *Goole Loc. Bd.* (1891), 2 Q. B. 212; 60 L. J. Q. B. 617.

(*d*) **Drain; sewer.** "The word *sewer* comes from the word to *sew*, i.e., to drain, and has a much more extended signification than *drain*. . . . In the common sense of the term, it means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cess-pool for the purpose of retaining the sewage, whether as a simple deposit or to be converted into manure, or other useful purposes." *Per* Kindersley, V.-C., in *Sutton* v. *Norwich* (*Mayor, &c., of*), 27 L. J. Ch. 732, at p. 742; 22 J. P. 353. An open tidal ditch may be a sewer (*Cornwell* v. *Metropolitan Commissioners of Sewers*, 10 Ex. 771; 19 J. P. 313); a ditch in a field receiving the contents of a road drain, into which several houses drained, was held to be a sewer (*Kirkheaton Loc. Bd.* v. *Beaumont*, 52 J. P. 68); as was also an iron pipe which carried away effluent water from sewage works. *Tottenham Loc. Bd.* v. *Button*, 2 T. L. R. 828. Where the sewage of several houses drained through a stone sough into an open ditch or watercourse, which in its turn flowed into a brook, the ditch was held to be a sewer. *Wheatcroft* v. *Matlock Loc. Bd.*, 52 L. T. (N. S.) 356. A purely agricultural stream, which by degrees had changed its character by becoming a channel for the reception and carrying away of sewage, was also held to be a sewer. *Falconer* v. *South Shields Corporation*, 11 T. L. R. 223. But a brook solely supplied by the drainage, natural and artificial, of neighbouring agricultural land, and into which two or three houses drained, was held not to be a sewer. *Reg.* v. *Godmanchester Loc. Bd.*, L. R. 1 Q. B. 328; 35 L. J. Q. B. 125. And a watercourse, into which some sewage was allowed to flow, was held not to be such a sewer that a district board might discharge an increased quantity of sewage into it, so as to perceptibly increase the pollution of the stream. *Att.-Gen.* v. *Hackney Dist. Bd.*, L. R. 20 Eq. 626; 44 L. J. Ch. 545. A set of pipes which drained several houses, and terminated in a cess-pit on private ground, was held not to be a sewer. *Meader* v. *West Cowes Loc. Bd.* (1892), 3 Ch. 18; 61 L. J. Ch. 561.

A marsh wall or embankment keeping back the river Thames from inundating the Isle of Dogs, through which a sewer passed, was held to form part of the sewer (*Poplar Dist. Bd.* v. *Knight*, *ante*, p. 197) and so was a man-hole to a sewer. *Swanston* v. *Twickenham Loc. Bd.*, 11 Ch. D. 838; 48 L. J. Ch. 623.

A drain becomes a sewer vesting in the local authority under sec. 68, *ante*, as soon as it receives, without the sanction of the local authority, the drainage of more than one building not within the same curtilage. *Bateman* v. *Poplar Dist. Bd.* (No. 2), 37 Ch. D. 272; 57 L. J. Ch. 579; *Acton Loc. Bd.* v. *Batten*, 28 Ch. D. 283; 54 L. J. Ch. 251. Where a combined drain for the drainage of four houses was constructed under the order of a vestry, and subsequently a rain-water pipe was, without the sanction of the vestry, connected with it, it was held by Bruce, J., that the rain-water pipe was a drain, and that its unauthorised connection with the combined drain converted the latter, from the point of junction, into a sewer. *Holland* v. *Lazarus*, 66 L. J. Q. B. 285; 61 J. P. 262.

A pipe which passed through the basement of three houses, and received the drainage of all of them, was held by Wills and Wright, JJ., to be a sewer from end to end within the meaning of the similar definition of "drain" contained in sec. 4 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55). *Travis* v. *Uttley* (1894), 1 Q. B. 233; 63

one building only, or premises within the same curtilage (*e*), and made merely for the purpose of communicating with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed, and shall also include any drain for draining any group or block of houses by a combined operation under the order of any vestry or district board (*f*); and the word "sewer" (*g*) shall mean and include sewers and drains of every description, except drains to which the word "drain," interpreted as aforesaid, applies . . . (*h*). 18 & 19 Vict. c. 120. "Sewer."

251. [*Commencement of Act, January 1st*, 1856.]

L. J. M. C. 48. This case, however, was subsequently explained by Cave and Wills, JJ., who held, under the same Act, that a pipe which receives the drainage of more than one building, not being premises within the same curtilage, is a "sewer" only from and below the point where it receives the drainage of more than one building, and is a "drain" above that point. *Beckenham Urb. Dist. Counc.* v. *Wood*, 60 J. P. 490.

Where a pipe drained two houses, not in the same curtilage, and was therefore a sewer, and the owner of one of the houses cut off his connection, it was held that the pipe nevertheless continued to be a sewer vested in and repairable by the vestry, there being no statutory provision divesting them of it. *St. Leonard's, Shoreditch* v. *Phelan* (1896), 1 Q. B. 533; 65 L. J. M. C. 111.

(*e*) **Curtilage.** Two blocks of buildings were separated from each other by a causeway, which opened into a public thoroughfare. Access to one block was obtained from the causeway, the only access to the other being from the thoroughfare. They were drained by a combined drain. *Held*, that the drain was used for the drainage of "premises within the same *curtilage*," and was therefore a "drain" maintainable by the owner. *Pilbrow* v. *St. Leonard's, Shoreditch* (1895), 1 Q. B. 433; 64 L. J. M. C. 130. The Lowther Arcade (a covered passage with a gate at each end and shops and houses on each side) was drained by means of a construction running down the centre to a main sewer, receiving in its course the drainage of the buildings on either side. The construction was held not to be "a drain of and used for the drainage of one building only, or premises within the same *curtilage*," but was a sewer which vested in and was maintainable by the vestry. *St. Martin's-in-the-Fields* v. *Bird* (1895), 1 Q. B. 428; 64 L. J. Q. B. 230.

Under the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), sec. 92, a vacant piece of land belonging to and in front of a public-house, but separated from it by a narrow footpath used by the public, was held to be a curtilage of the public-house. *Marson* v. *London, Chatham and Dover Rly.*, L. R. 6 Eq. 101; 37 L. J. Ch. 483. An orchard behind a dwelling-house and its outhouses was held not to be a curtilage within the meaning of the Gun Licence Act, 1870 (33 & 34 Vict. c. 57), sec. 7. *Asquith* v. *Griffin*, 48 J. P. 724.

(*f*) **Order of vestry, &c.** Or pursuant to the order or direction, or with the sanction or approval of the Metropolitan Commissioners of Sewers. Met. Man. Amend. Act, 1862, sec. 112, *post*. Secs. 74 and 76, *ante*, enable vestries and district boards to order that a group or block of contiguous houses shall be drained by a combined operation. The "approval" of a scheme of combined drainage by the local authority is an "order" within the meaning of this section, and the construction becomes a "drain" and not a "sewer." *Bateman* v. *Poplar Dist. Bd.* (No. 1), 33 Ch. D. 360; 56 L. J. Ch. 149. Where four houses were drained into one drain, contrary to the directions of the sanitary authority, it was held that a subsequent purchaser was not estopped by the wrongful act of his predecessor in title from alleging that the drain in question was a sewer, and that the duty of maintaining it lay with the sanitary authority. *Kershaw* v. *Taylor* (1895), 2 Q. B. 471; 64 L. J. M. C. 245. See also *Holland* v. *Lazarus*, *ante*, p. 212. In the absence of evidence that a pipe draining a group of houses not in the same curtilage was laid by such order, sanction, or approval, such pipe is a drain vested in and repairable by the vestry or district board. *Appleyard* v. *St. Mary, Lambeth*, 66 L. J. Q. B. 347; 61 J. P. 276.

A penalty of fifty pounds is imposed by the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), secs. 4 and 5, *post*, on any person making any sewer or branching any sewer or drain into any sewer vested in the County Council, or in any vestry or district board, without their approval in writing.

(*g*) **Drain; sewer.** See note (*d*) on page 212.

(*h*) **Section 250.** The omitted words defined "ashpit" to include "dustbin," and were repealed by 56 & 57 Vict. c. 54 (Stat. Law Rev.). For substituted definition, see Pub. Hlth. (London) Act, 1891, sec. 141, *post*.

18 & 19 Vict. c. 120.

SCHEDULE (A.) (*k*).

PART I.

Sec. 2.

Saint Marylebone.
Saint Pancras.
Lambeth.
Saint George Hanover Square.
Islington, Saint Mary.
Shoreditch, St. Leonard.

PART II.

Paddington.
Saint Matthew Bethnal Green.
Saint Mary Newington, Surrey.
Camberwell.
Saint James Westminster.
Saint James and Saint John Clerkenwell to be considered as one parish.
Chelsea.
Kensington, Saint Mary Abbot.
Saint Luke Middlesex.
Saint George the Martyr Southwark.
Bermondsey.
Saint George in the East.
Saint Martin in the Fields.
Hamlet of Mile End Old Town.
Woolwich (*l*).
Rotherhithe.
Saint John Hampstead.

SCHEDULE (B.) (*k*).

Sec. 31.

PARISHES UNITED INTO DISTRICTS FOR THE PURPOSES OF THE ACT.

PART I.

Name of District.	Parishes.	Number of Members to be elected to District Board
Whitechapel District	Saint Mary Whitechapel	27
	Christchurch Spitalfields	12
	Saint Botolph without Aldgate, in the County of Middlesex	6
	Holy Trinity, Minories	1
	Saint Katherine, Precinct of.....	1
	Mile End New Town, Hamlet of	6
	Liberty of Norton Folgate	3
	Old Artillery Ground.....	1
	Tower, District of	1
	TOTAL	58
Westminster District (*m*)..	*Saint Margaret*.....	30
	Saint John the Evangelist	27
	TOTAL	57

(*k*) **Schedules (A.) and (B.)** are repealed, so far as relates to the election of members of the Met. Bd. Wks., by 55 & 56 Vict. c. 19 (Statute Law Revision).

(*l*) **Woolwich.** See sec. 238, and note thereto, *ante*.

(*m*) **Westminster.** The Westminster district board was dissolved, and the vestry of St. Margaret and St. John the Evangelist, Westminster, substituted by the Met. Man. (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17).

18 & 19 Vict. c. 120.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Greenwich District	Saint Paul Deptford, including Hatcham	21
	Saint Nicholas Deptford	6
	Greenwich	30
	TOTAL	57
Wandsworth District	Clapham	18
	Tooting Graveney	3
	Streatham	9
	Saint Mary Battersea (*n*), excluding Penge	12
	Wandsworth	9
	Putney, including Roehampton	6
	TOTAL	57
Hackney District (*o*)	*Hackney*	51
	Saint Mary Stoke Newington	6
	TOTAL	57
Saint Giles District.....	Saint Giles in the Fields	27
	Saint George Bloomsbury	21
	TOTAL	48
Holborn District	Saint Andrew Holborn above Bars	24
	Saint George the Martyr	9
	Saint Sepulchre, in the County of Middlesex	6
	Saffron Hill, Hatton Garden, Ely Rents, and Ely Place	9
	The Liberty of Glasshouse Yard	1
	TOTAL	49
Strand District	Saint Anne Soho	18
	Saint Paul Covent Garden	9
	Saint John the Baptist Savoy, or Precinct of the Savoy	1
	Saint Mary-le-Strand	3
	Saint Clement Danes	15
	Liberty of the Rolls	3
	TOTAL	49

(*n*) **Battersea.** The parish of St. Mary, Battersea, excluding Penge, was separated from the Wandsworth District, and incorporated as a separate vestry, by the Met. Man. (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17).

(*o*) **Hackney; Stoke Newington.** The Hackney district was dissolved, and the vestries of Hackney and St. Mary, Stoke Newington, were substituted by the Met. Man. (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).

18 & 19 Vict. c. 120.

Name of District.	Parishes.	Number of Members to be elected to District Board.
Fulham District (*p*)	*Saint Peter and Saint Paul Hammersmith*	24
	Fulham	15
	TOTAL	39
Limehouse District	Saint Anne Limehouse	15
	Saint John Wapping	3
	Saint Paul Shadwell	6
	Ratcliffe, Hamlet of	12
	TOTAL	36
Poplar District	All Saints Poplar	24
	Saint Mary Stratford-le-Bow	9
	Saint Leonard Bromley	15
	TOTAL	48
Saint Saviour's District..	Christchurch....	15
	Saint Saviour (including the Liberty of the Clink)	24
	TOTAL	39

PART II.

Plumstead District (*q*)....	Charlton next Woolwich	9
	Plumstead (*q*)	12
	Eltham	6
	Lee (*q*)	9
	Kidbrooke	1
	TOTAL	37
Lewisham District	Lewisham, including Sydenham Chapelry	24
	Hamlet of Penge....	3
	TOTAL	27

(*p*) **Fulham; Hammersmith.** The Fulham district was dissolved, and the vestries of Fulham and St. Peter and St. Paul, Hammersmith, were substituted by the Met. Man. Amend. Act, 1885 (48 & 49 Vict. c. 33).

(*q*) **Plumstead; Lee.** The Plumstead district was dissolved, and in substitution therefor the Plumstead vestry was incorporated, and the other parishes in the district were formed into the *Lee District*, by the Met. Man. (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55).

PART III. 18 & 19 Vict. c. 120.

Parish and District united for electing One Member of the Metropolitan Board of Works (r).

Name of District.	Parishes.	Number of Members to be elected to District Board.
The Parish of Rotherhithe, united with Saint Olave District	Saint Olave	12
	Saint Thomas Southwark	1
	Saint John Horsleydown	15
	TOTAL	28

SCHEDULE (C.) Secs. 175, 176.

The Close of the Collegiate Church of Saint Peter.
The Charter House.
Inner Temple.
Middle Temple.
Lincoln's Inn.
Gray's Inn.
Staple Inn.
Furnival's Inn.

SCHEDULE (D.) Sec. 135.

MAIN SEWERS OF THE METROPOLIS.

NORTH SIDE OF THE THAMES.

Stamford Brook (West Branch).

Commences at an angle in the boundary between the parishes of Hammersmith and Acton, on the south of the Uxbridge and London Road, and tangent to a footpath running south from East Acton Lane, extending thence in a south-easterly direction to Paddenswick Green, when it joins the east arm of the said brook.

Stamford Brook (East Branch).

Commences at a point on the boundary between the parishes of Hammersmith, Willesden, and Acton, about 100 feet north-east of the Old Oak Bridge over the North-Western Railway, extending thence in a southerly direction to Paddenswick Green.

The united streams of the above two branches discharge into Hammersmith Creek.

Brook Green Sewer.

Commences in Wood Lane, at the keeper's lodge, on the south side of Wormwood Scrubs, and discharges into the River Thames by two outlets, viz., Bridge Road and Queen Street, on the east side of Hammersmith Suspension Bridge.

A branch from the above commences in New Road, at the north end of the Grove, and joins the main sewer at Broadway, Hammersmith.

(r) **Members of Met. Bd. Wks.** See note (k) on p. 214.

18 & 19 Vict. c. 120.

Fulham Sewer.

Commences at a sluice in the moat surrounding the Bishop of London's Palace, on the west side of the junction of High Street, Fulham, with the Fulham Road, and discharges into the Thames under the toll house of Fulham Bridge.

Eel Brook Sewer.

Commences at a point in North End Road, about 80 feet north-west of Walham Green Church, and discharges into Kensington Canal on the south-east side of the Imperial Gasworks.

Counters Creek Sewer (Main Line).

Commences at a point in the Harrow Road, about 200 feet west of Kensal Green Cemetery Gate, and discharges into the Thames at the outlet now forming on the south-west side of Cremorne Gardens.

Counters Creek Sewer (West Branch).

Commences at a culvert under the Grand Junction Canal, on the boundary between the parishes of Kensington and Hammersmith, at the south-west corner of Kensal Green Cemetery, and joins the above main line in Latimer Road at its junction with Bromley Road.

Counters Creek Sewer (East Branch).

Drains the whole of Kensal New Town, situate in a detached portion of the parish of St. Luke, Chelsea, and part of the parish of St. Mary, Paddington, and passes under the Great Western Railway at a bridge leading to Portobello Lane, on the south-east side of the Western Gasworks, and joins the main sewer at a point about a quarter of a mile north-west of Notting Barn Farm.

Counters Creek Sewer (Kensington Branch).

Commences in Victoria Grove at about 50 feet to the north of Uxbridge Road, and joins the main line at the junction of Pembroke and Warwick Roads.

Sewer to the Metropolitan Sewage Manure Works.

Commences at Knightsbridge, at its junction with the Ranelagh sewer, and extends thence in a south-westerly direction to the works at Stanley Bridge.

Millman's Row Sewer.

Commences in Fulham Road, at about 780 feet west, and at about 230 feet east of the junction of Park Walk with Fulham Road, and discharges into the River Thames opposite to Millman's Row.

Church Street Sewer.

Commences in Gloucester Road at its junction with Canning Place, at about 750 feet south of Hogmore Lane Gate, and discharges into the Thames on the south side of Chelsea Old Church.

Queen Street Sewer.

Commences between Gloucester Road and Hyde Park Gate south, on the south of Kensington Road, and about 300 feet south of Kensington Gate runs through Old Brompton, and discharges into the River Thames on the east side of Chelsea Free Dock.

Smith Street Sewer.

Commences in the Kensington Road at a point about 750 feet west of Prince of Wales' Gate, and extends thence by Rutland Gate, Rutland Street, and Fulham Road, on the west of Brompton Crescent, and along College and Markham Streets, and discharges into the Thames on the west side of Chelsea Royal Hospital.

Ranelagh Sewer.

18 & 19 Vict. c. 120.

The branch sewers from Edgeware Road, Finchley Road, and Kilburn Vale unite at Kilburn Bridge, and for the main line, which, running in a southerly direction, discharges into the River Thames on the south-east side of Chelsea Royal Hospital.

This sewer has several branches, the chief of which commences in Grove End Road, at about 900 feet west of St. John's Wood Road, extending thence by Lisson Grove, New Road, Grand Junction Road, and Albion Street, to a tumbling bay, where it joins the main sewer in Uxbridge Road.

King's Scholars Pond Sewer.

Commences in the Finchley Road, at about 1,500 feet above Junction Road toll gate, and discharges into the River Thames at the Equitable Gasworks, about 700 feet above Vauxhall Bridge.

King's Scholars Pond Sewer (Pall Mall Branch).

Commences at Waterloo Place, and joins the main line opposite the entrance of Buckingham Palace.

Grosvenor Ditch.

Commences in Page Street, at about 150 feet east of the Junction with Regent Street, Vauxhall Bridge Road, and discharges into the River Thames at the northern extremity of Millbank Road.

Horseferry Road Sewer.

Commences in Grey Coat Place, and discharges into the River Thames at the Horseferry Stairs.

Wood Street Sewer.

Commences in Grey Coat Place, and discharges into the River Thames in the prolongation of Wood Street.

Victoria Street Sewer.

Commences at Shaftesbury Terrace, Pimlico, and discharges into the Thames at Percy Wharf.

Regent Street Sewer (Western Branch).

Commences in the outer circle of the Regent's Park, at about 200 feet north-west of Hanover Gate entrance, and joins the eastern branch in the New Road, opposite to the prolongation of Portland Place.

Regent Street Sewer (Eastern Branch).

Commences in Upper Albany Street, at about 200 feet south of Collateral Cut Bridge over the Regent's Canal, and joins the western branch at the aforesaid point in the New Road.

The main sewer proceeds thence along Regent Street, and discharges into the River Thames at Percy Wharf.

Northumberland Street Sewer (Western Branch).

Commences in Warren Street, on the north of Fitzroy Square, and proceeds in a southerly direction along Cleveland, Newman, Wardour, Princes, and Panton Streets, Haymarket, to Charing Cross, opposite the district post office.

Northumberland Street Sewer (Eastern Branch).

Commences in New Road, at about 170 feet west of the junction with Hampstead Road, and proceeds along Tottenham Court Road, High Street, Seven Dials, and St. Martin's Lane, to Charing Cross, when it joins the western branch.

The main line proceeds along Northumberland Street, and discharges into the Thames at Northumberland Wharf.

18 & 19 Vict. c. 120.

Savoy Street Sewer.

Commences in Stanhope Street, Regent's Park Basin, at a point at about 160 feet north of the junction with Edward Street, and proceeds along Robert, George, Gower, Charlotte, Bloomsbury, Endell, Bow, Wellington, and Savoy Streets, and discharges into the Thames at a point about 100 feet above Waterloo Bridge.

Norfolk Street Sewer.

Commences at the junction of Drury Lane and Long Acre, and passes by the Olympic Theatre, and along Newcastle Street and Strand, and discharges into the River Thames opposite Norfolk Street.

Essex Street Sewer (Western Branch).

Commences in Russell Square, opposite Montague Place, and proceeds along Montague, Russell, and Museum Streets, Drury Lane, Great Wild Street, and Vere Street, to the junction of the eastern branch at the intersection of Sheffield and Gilbert Streets, Clare Market.

Essex Street Sewer (Eastern Branch).

Commences at the corner of Tottenham Court Road, and proceeds along New Oxford Street, Newton Street, and Cross Lane, Parker and Great Queen Streets, west side of Lincoln's Inn Fields, to the junction with the western arm above described.

The main sewer proceeds thence along Gilbert Street, Clement's Lane, Pickett Street, and Essex Street, and discharges into the River Thames at Temple Pier.

Fleet Sewer.

Commences in High Street, Hampstead, at the junction of High Street with Flask Walk, extending thence through South End Green, Gordon House Lane, Victoria Road, Great College Street, Old St. Pancras Road, Bagnigge Wells Road, west of Middlesex House of Correction, and by Farringdon Street to Blackfriars Bridge, where it discharges into the River Thames.

This sewer has numerous tributaries running into other districts, the chief of which are Camden Road, Caledonian Road, Pentonville Hill, River Street, St. John's Road, Holborn Hill, and Guildford Street.

Goswell Street Sewer.

Commences in Sydney Street, at the junction of Sydney Grove, and discharges into the Thames at Walbrook.

London Bridge Sewer (City Road Branch).

Commences at Duncan Terrace, on the west side of the New River, and joins the main line at the north end of Finsbury Pavement.

Another branch commences in Lonsdale Square, Islington, and, extending thence through Barnsbury Street, Richmond Grove, passes under the New River at New North Road Bridge, thence along Portland Place, King Street, under the Regent's Canal, by Sturt's Lock, Walbrook Street, and Critchill Place, where it joins another branch at St. John's Church, Hoxton.

London Bridge Sewer (Balls Pond Branch).

Commences on the boundary between St. Mary Islington and St. John Hackney, at Cock and Castle Lane, Dalston, and passes by Balls Pond and Rosemary Branch Bridge to the junction at St. John's Church, above described. The united sewers then discharge into the River Thames at London Bridge.

London Bridge Sewer (Shoreditch Branch).

Commences in Queen's Road, at the junction with Laurel Street, Dalston, and extending thence along Queen's Road, Great Cambridge Street, Hackney Road, Shoreditch, and Bishopsgate, joins the main line at King William's Statue.

18 & 19 Vict. c. 120.

Irongate Sewer.

Commences in the City, and proceeds along the south-west side of Houndsditch, west side of Minories, and by the precincts of Old Tower Without, and discharges into the River Thames at Irongate Stairs, on the east of the Tower.

Nightingale Lane Sewer.

Commences in Union Street, Old Artillery Ground, and Booth Street, Spitalfields, and extends thence along Commercial, Leonard, Wells, and Parson Streets, and Nightingale Lane, and discharges into the Thames on the western side of the entrance into Hermitage Basin.

Hermitage Street Sewer.

Commences in Redmead Lane, on the boundary between the parishes of St. John Wapping and St. George in the East, and extends thence along Great Hermitage Street, and discharges into the River Thames at about 50 feet east of Union Stairs.

Old Gravel Lane Sewer.

Commences at the boundary between the parishes of St. George in the East and St. John Wapping, in Old Gravel Lane, and discharges into the River Thames at a point about 110 feet west of the Thames Tunnel.

Wapping Wall Sewer.

Commences in Green Bank, at the junction of Upper Well Alley, and passes through King Street, and discharges into the River Thames at about 120 feet on the north-east side of New Crane Dock.

Shadwell Basin Sewer.

Commences on the north side of the Eastern Dock, at the termination of West Gardens, and extends thence between the warehouses and New Gravel Lane, on the north side of Shadwell Basin, and along Shadwell Dock Street, and discharges into the River Thames at the eastern pier of the Shadwell entrance to the London Docks.

Pennington Street Sewer.

Commences at the boundary between the parishes of St. George in the East and St. John Wapping, in St. George Street, and extends thence along Pennington Street, Old Gravel Lane, West Gardens, Cow Lane, Little Spring Street, Labour-in-Vain Street, and Lower Shadwell, and discharges into the River Thames at Shadwell Dock Stairs.

Ratcliffe Highway Sewer (Western Branch).

Commences at the junction of Sherwood Place with Meed Street, at about 900 feet south-east of Shoreditch Church, and extends along Turvile, Thomas, and High Streets, and Whitechapel Road, to the junction of New Road with Whitechapel Road.

Ratcliffe Highway Sewer (Eastern Branch).

Commences at the junction of Hague Street with Bethnal Green Road, and extends along Hague Street, Wellington and Charles Streets, to the junction of New Road with Whitechapel Road, above described.

Ratcliffe Highway Sewer (North-eastern Branch).

Commences from the rear of Shoreditch Church, and proceeds along Old Castle Street, Virginia Row, Wellington Row, Old Bethnal Green Road, Cambridge Road, Cleveland Street, King Street, Jamaica Street, Havering Street, and Love Lane, to Ratcliffe Highway.

The main sewer proceeds along New Road, Cannon Street Road, St. George's Street, High Street, Shadwell, and Broad Street, and discharges into the River Thames at Ratcliffe Cross Stairs.

18 & 19 Vict. c. 120.

Limekiln Dock Sewer.

Commences at the junction of Victoria Road with Bishop's Road, on the south-western side of Bonner's Hall Bridge, leading into Victoria Park, and extends along Victoria Road, east side of Bethnal Green, Globe Road, White Horse Lane, and Rhodeswell Road, and passes under the Regent's Canal at Rhodeswell Wharf thence along the Black Ditch, Upper North Street, and North Street, and discharges into the River Thames at Limekiln Dock.

Great Sluice and Drunken Dock Sluice.

These sluices are situated on the eastern side of the Isle of Dogs, and drain the whole of that part of the Isle south of the West India Dock Basin. They have four inlet sluices for purposes of flushing.

Blackwall Sluice.

Commences at Batson's Inlet, near Limehouse entrance to the West India Dock, and discharges into the Thames on the north side of the Blackwall entrance to the West India Dock.

Eastern Counties Railway Sewer.

Commences at Mile End Bridge, over the Regent's Canal in Bow Road, proceeds along Bow Road, Tredegar Square, and by the railway, and discharges into the River Lea, where the viaduct of the said railway crosses that river.

Hackney Brook Sewer (Main Line).

Commences in the High Road opposite to St. John's Church, Upper Holloway, and extends thence in a south-east direction along Holloway Road to a point about 450 feet south of Tollington Road, thence in an easterly direction by the north of Abney Park Cemetery, Hackney Downs, and Hackney Wick, and discharges into the River Lea, immediately to the north of Old Ford Wharf.

Hackney Brook Sewer (Wick Lane Branch).

Commences in Old Ford Road, on the east side of Old Ford Bridge, crossing the Regent's Canal, and extends along Grove Road, Wick Lane, and joins the main sewer at Hackney Wick.

SOUTH SIDE OF THE THAMES.

Beverley Brook.

Commences on the boundary between the parishes of Putney and Wimbledon, at a point about 1,800 feet south of Beverley Bridge, on the Kingston Road, and discharges into the River Thames about half a mile above Putney Town.

Sewer between Parishes of Putney and Wandsworth.

Commences on the road from Kingston to Wandsworth, and discharges into the River Thames at a point about 1,500 feet below Fulham Bridge.

Wandle River.

Commences at a point where the parishes of Streatham and Tooting intersect the river, and discharges into the River Thames at the town of Wandsworth.

Falcon Brook.

Commences at Tooting Common, and discharges into the River Thames at Battersea Creek.

Lord Spencer's Sewer.

Commences in the town of Battersea, and extends in an easterly direction through Battersea Park, and discharges into the River Thames at about 400 feet below Battersea New Bridge.

Heath Wall Sewer (*Main Line*). 18 & 19 Vict. c. 120.

Commences at the Falcon Brook at a sluice about 300 feet north of the South-Western Railway, and extending along the south margin of Battersea Fields, discharges into the Thames at Heath Wall Mill.

Heath Wall Sewer (*Clapham Rise Branch*).

Commences on the boundary between the parishes of Clapham and Lambeth at the intersection of New Road with Clapham Rise, and extends along the east side of Clifton Street, and joins the main sewer at a point about 100 feet north-east of New Road, Battersea Fields.

Effra Sewer.

Commences at the boundary between the parishes of St. Mary Lambeth and Croydon, in Westow Hill Road, immediately opposite to the convent of "Our Lady," and discharges into the River Thames at Vauxhall Creek, on the south side of the Phœnix Gasworks, and near to Vauxhall Bridge.

Effra Sewer (*Upper Norwood Branch*).

Commences in Westow Hill Road on the boundary between the parishes of Lambeth and Croydon, at about 200 feet west of the Crystal Palace Hotel, and proceeds northward along the boundary between the parishes of St. Mary Lambeth and St. Giles Camberwell, and joins the main sewer at a point about 230 feet west of Croxted Lane.

Duffield and Battle Bridge Sewers.

These sewers drain the most densely inhabited portions of the south side. The inlets for flushing purposes are at Kennington, Vauxhall, Lambeth Church, and Stangate. The outlets are by the following sluices, viz., the Arnold and Dover sluices, near Waterloo Bridge; Pudding Mill, near Blackfriars Bridge; the Boar's Head, Welsh Troopers, Black Lion, and Bear sluices, near Southwark Bridge; the Bridge Yard, Battle Bridge; and Green Bank, in St. Olave Southwark; Freeman's Lane, St. John Jerusalem; and Great St. John in Horsleydown; and the Salisbury and Duffield sluices, in Bermondsey.

Limekiln Sluice.

Drains the open fields of part of the parish of Rotherhithe, and proceeds along Swan Lane, and discharges into the River Thames at about 300 feet east of the Thames Tunnel.

Globe Stairs Sewer.

Drains the northern basin of the Commercial Dock Company, and extends along the eastern side of St. Paul's Church, Rotherhithe, and part of Rotherhithe Street, and discharges into the River Thames at Globe Stairs.

Sewer at Durand's Wharf (*Rotherhithe*).

Commences to the south-east of Bull Head Dock, Rotherhithe, and pursues an easterly course by Rotherhithe and Lower Queen Street, and discharges into the River Thames at a "10 Footway," opposite to Cow Lane.

Rotherhithe Pier Sewer.

Commences in Trinity Street, at a point about 400 feet south of Cow Lane, and proceeds along Trinity Street, and discharges into the River Thames at Rotherhithe Boat Pier.

Earl Sewer (*Main Line*).

Commences in Cold Harbour Lane, at a point about 1,100 feet north-east of its junction with Loughborough Road, and proceeds along High Street, Camberwell, Camberwell Road, Boundary Lane, and eastward along the boundaries of several parishes, and discharges into the River Thames on the boundary between the counties of Surrey and Kent, near to the Royal Dock Yard, Deptford.

18 & 19 Vict. c. 120.

Earl Sewer (Wyndham Road Branch).

Commences on the east side of Kennington Park, and proceeds along New Row, and southward on the east of Thomas Street, eastward along Wyndham Road, and joins the main sewer at a point about 100 feet south of Southampton Street, Camberwell.

Earl Sewer (White Post Lane Branch).

Commences in Victoria Road, at the junction with Choumert Place and Cutthroat Lane, near Peckham Rye, and proceeds along Victoria Road, Hanover Street, Rye Lane, High Street, Meetinghouse Lane, Halfway House Lane, and White Post Lane, and joins the main sewer at the junction of the parishes of Rotherhithe, St. Paul's Deptford, and St. Giles Camberwell.

Royal Dock Yard Sewer.

Commences on the east of Black Horse Bridge, and extends eastward on the south side of the Mast Pond, and discharges into the River Thames opposite to the Royal Victualling Yard.

Ravensbourne and Sydenham Sewer.

Commences at Bell Green, and extends along and by Catsford Hill Road, Lewisham, and Bromley Road, Silver Street, Loam Pit Vale, and Mill Lane, and discharges into Deptford Creek at Parish Wharf, near Kingsford Mill.

Ravensbourne and Lee Green Sewer.

Commences in the Eltham Road, about 300 feet east of Lee Green, and proceeds along Lee Road, Lewisham Road, Bath Place, Egerton Road, and North Pole Lane, to a pumping station, where it discharges into Deptford Creek, at a point about 400 feet north of the London and Greenwich Railway.

Horseferry Road (Greenwich).

Commences in Caroline Street and Roan Street, and proceeds along Union and Bridge Streets, and discharges into the River Thames at Horseferry.

Sec. 185.

SCHEDULE (E.)

Form of Mortgage of Rates.

Mortgage, Number ( )

By virtue of an Act passed in the year of the reign of Queen Victoria, intituled [*here insert the title of this Act*], the (*r*) . . . the board of works for the district of *or* the vestry of the parish of (*as the case may be*), in consideration of the sum of paid to by *A.B.*, of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, all [*here describe the moneys or rates to be mortgaged*], to hold to the said *A.B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied; and it is hereby declared that the said principal sum shall be repaid on the day of and that in the meantime the interest thereof shall be paid on the day of and the day of in every year.

In witness whereof the (*r*) . . . the said district board, *or* the said vestry, (*as the case may be,*) have hereunto set their seal, this day of one thousand eight hundred and

(*r*) **Forms.** The omitted words referred to the Met. Bd. Wks., and are obsolete. See secs. 185 and 189, and notes thereto, *ante*.

18 & 19 Vict. c. 120.

Sec. 189.

SCHEDULE (F.)

Form of Transfer of Mortgage.

I *A.B.* of in consideration of the sum of pounds paid to me by *C.D.* of do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, Number , bearing date the day of and made by . . . (*r*) the board of works for the district of *or* the vestry of the parish of for securing the sum of and interest [*or, if such transfer be by indorsement on the mortgage, insert, instead of the words after "assigns"* the within security], and all my property, right and interest in and to the money thereby secured, and in and to the moneys thereby assigned. In witness whereof I have hereunto set my hand and seal, this day of one thousand eight hundred and

A.B. (L.S.)

METROPOLIS MANAGEMENT AMENDMENT ACT, 1856 (*a*).

19 & 20 Vict. c. 112. An Act to amend the Act of the last Session of Parliament, Chapter One hundred and twenty, for the better Local Management of the Metropolis.

[29th July, **1856**

[*Preamble. Recited Met. Man. Act*, 1855. *Rep. by* 55 *&* 56 *Vict. c.* 19 (*Statute Law Revision*).]

Church rates where made in open vestry before passing of the Act 18 & 19 Vict. c. 120, to continue to be so made.

1. Where at the time of the passing of the said Act the power of making church rates (*b*) or rates of the nature of church rates in any parish was vested in any open vestry, or in any meeting in the nature of an open vestry meeting, or in any meeting of the parishioners, inhabitants, or ratepayers generally, or of such of the parishioners, inhabitants, or ratepayers as were rated at or above any specified amount or value (whether such vestry or meeting were holden for the parish at large or for any liberty or other district therein), such power shall not be deemed to have become vested in the vestry constituted in such parish under the said Act, but shall be exercised as if the said Act had not been passed . . .

Nothing in this Act or in 18 & 19 Vict. c. 120, to affect ecclesiastical districts.

2. Nothing in the said Act or this Act shall affect or be deemed to have affected any power of electing or appointing churchwardens or making church rates, or other power which, at the time of the passing of the said Act, was vested in any such open vestry or meeting as aforesaid, or any elected or other vestry, where such vestry or meeting acts exclusively for any district (by whatever denomination distinguished) created for ecclesiastical purposes only (*c*).

Other powers of vestries and like meetings declared to have been

3. Save as hereinbefore otherwise provided, all the duties, powers, and privileges (including such as relate to the affairs of the Church (*d*), or the management or relief of the poor, or the administration of any money or

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(*a*) **Short title.** The above short title is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*b*) **Church rates.** Compulsory church rates were abolished by the Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), except in cases where, at the time of the passing of the Act, the rate was applicable to purposes other than "ecclesiastical purposes," as defined by the Act; or money had been borrowed and remained due on the security of the church rate; or where church rates were levied under the authority of any private or local Act in consideration of the abolition of tithes, or upon any contract made, or for valuable consideration given. Under two local Acts (51 Geo. 2, ch. cli. and 1 & 2 Geo. 4, ch. xxi.), it was held that certain fees payable in respect of burials were applicable to the purpose, amongst others, of the repair of the church. *Reg.* v. *St. Marylebone Vestry* (1895), 1 Q. B. 771; 64 L. J. Q. B. 622.

(*c*) **Ecclesiastical purposes.** By sec. 10 of the Church Rate Abolition Act, 1868, "ecclesiastical purposes" is defined to mean "the building, repairing, enlargement, and repair of any church or chapel, and any purpose to which by common or ecclesiastical law a church rate is applicable, or any of such purposes."

(*d*) **Affairs of the Church.** The duties, powers, and privileges here referred to relate to the same matters as the duties, powers, and authorities mentioned in sec. 90 of the Met. Man. Act, 1855, *ante*; and do not apply to the right of presentation to a church. *Carter* v. *Cropley*, 26 L. J. Ch. 246; 21 J. P. 135. Where, by a local Act, the vestrymen, governors and directors of the poor were to make a rate for raising a sum of money for payment of the rector's stipend, it was held that the power was transferred to the vestry under this Act. *Reg.* v. *Stretfield*, 32 L. J. M. C. 236; 27 J. P. 391. A prerogative writ of *mandamus* lies against a vestry to compel them to make the rate. *Reg.* v. *St. George's, Southwark* (No. 2), 61 L. J. Q. B. 398; 56 J. P. 821.

other property applicable to the relief of the poor) (*e*), which might have been performed or exercised by any open or elected or other vestry or any such meeting as aforesaid in any parish, under any local Act or otherwise, at the time of the passing of the said Act of the last session, shall be deemed to have become transferred to and vested in the vestry constituted by such last-mentioned Act; except so far as any such duties, powers, or privileges may in the case of a parish included in any district mentioned in schedule B. to the said Act be vested by section ninety thereof in the board of works of such district: provided that all duties and powers relating to the affairs of the Church, or the management or relief of the poor, or the administration of any money or other property applicable to the relief of the poor, which at the time of the passing of the said Act were vested in or might be exercised by any guardians (*f*), governors, trustees, or commissioners, or any body other than any open or elected or other vestry, or any such meeting as hereinbefore mentioned, shall continue vested in and be exercised by such guardians, governors, trustees, or commissioners (*g*) or other body as aforesaid.

19 & 20 Vict. c. 112.

transferred to vestries under Act 18 & 19 Vict. c. 120, except powers transferred to district boards.

4—5. [*Occupiers may claim to be rated. Rep. by* 55 & 56 *Vict. c.* 19 (*Statute Law Revision.*)]

6—8. [*Right of occupier so claiming to vote. Rep. by Loc. Govt. Act,* 1894, *sec.* 89, *post.*]

9. Every meeting of any vestry constituted by the said Act of the last session, of which and of the special purpose whereof notice is now by law required to be affixed on or near the principal doors of the churches and chapels within the parish, may be convened by transmitting through the post or otherwise notice, signed by the clerk to the vestry, to each vestryman, at his usual or last known place of abode in England, of the place and hour of holding the same, and the special purposes thereof, three days before the day appointed for such meeting, and also by affixing at the same time notice thereof on or near the door of any building where the said meeting is to be holden, and it shall not be necessary that notice of any such meeting shall be further or otherwise signed or published.

Regulation of meetings of vestries constituted by 18 & 19 Vict. c. 120.

(*e*) **Management or relief of the poor.** Where, under a deed for the foundation of a charity, the right of electing alms-people was vested in the "minister, churchwardens, overseers of the poor, and such parishioners as should pay taxations to the poor," it was held that this was not a duty, power, or privilege relating to the management and relief of the poor within the meaning of this section, and that the right of electing alms-people was not transferred to the vestry. *Att.-Genl.* v. *The Drapers' Co.*, 27 L. J. Ch. 542; 22 J. P. 514.

The power of making the poor rates, conferred by local Acts on the "churchwardens, overseers of the poor, and vestrymen" of a parish was held to be transferred to the vestry under this Act (*Vaughan* v. *Imray*, 28 L. J. M. C. 78; 23 J. P. 118); and the appointment of governors and directors of the poor, conferred on a vestry under a local Act (*Reg.* v. *Rendle*, 30 L. J. M. C. 135; 25 J. P. 565); and also the power of appointing new trustees of a charity which was vested by a decree of the Court in the parishioners and inhabitants of the parish in vestry assembled. *In re Hayle's Estate*, 31 L. J. Ch. 612; 26 J. P. 516.

(*f*) **Guardians.** Directors of the poor appointed by a vestry under their local Act were held to be "guardians" within the definition of sec. 109 of the Poor Law Amend. Act, 1834 (4 & 5 Will. 4, c. 76). *Reg.* v. *St. Pancras, Directors of the Poor*, 27 L. J. M. C. 281; 22 J. P. 385. In which case it was also held that the present section does not repeal the proviso of sec. 197 of the Met. Man. Act, 1855, *ante*.

(*g*) **Commissioners.** The exceptions contained in this section do not empower the Ecclesiastical Commissioners to erect a church beyond the regular line of building in a street. *Ecclesiastical Commissioners* v. *Clerkenwell Vestry*, 30 L. J. Ch. 454 25 J. P. 580.

19 & 20 Vict. c. 112.

Sec. 144 of 18 & 19 Vict. c. 120, declared to extend to authorise applications to Parliament for providing parks, &c.

10. And whereas doubts are entertained whether the provision in section one hundred and forty-four of the said Act of the last session, authorising the Metropolitan Board of Works, where it appears to them that further powers are required for the purpose of any work for the improvement of the Metropolis or public benefit of the inhabitants thereof, to make applications to Parliament for that purpose, and providing that the expenses of such application may be defrayed as other expenses of the said Board, extends to authorise applications to Parliament by such Board for powers for providing parks, pleasure grounds, places of recreation, and open spaces, and it is expedient to remove such doubts: the powers given to the said Board to make applications to Parliament, and the provision for the expenses of such application, extend respectively to applications to Parliament for the purpose of providing parks, pleasure grounds, places of recreation, and open spaces for the improvement of the Metropolis or the public benefit of the inhabitants thereof, and to the expenses of all such applications.

District boards and vestries empowered to take ground to be maintained as an open space or pleasure ground.

11. Any district board or vestry may take, by agreement or gift, any land or any right or easement in or over land, for any estate or interest therein, and on such terms and conditions as they may think fit, for the purpose of such land being either kept as an open space or being kept and maintained as a pleasure ground for the public benefit of the inhabitants of the district or parish; but this enactment shall not authorise any expenditure to be defrayed by rates, except for the purpose of enclosing, maintaining, planting, and otherwise improving the same (*h*).

Recited Act and this Act to be as one.

12. The said Act of the last session and this Act shall be construed together as one Act.

(*h*) **Open spaces.** Any vestry or district board may now acquire for valuable or nominal consideration any open space situate within their parish or district, and may defray the expenses out of the funds at their disposal, or which they are empowered to raise under this Act. Metropolitan Open Spaces Act, 1881, secs. 5 and 10, *post*, vol. ii. tit. "*Open Spaces.*"

METROPOLIS MANAGEMENT AMENDMENT ACT, 1858 (*a*).

21 & 22 Vict. c. 104. An Act to alter and amend the Metropolis Local Management Act (1855), and to extend the Powers of the Metropolitan Board of Works for the Purification of the Thames and the Main Drainage of the Metropolis. [2nd August, **1858.**

[*Preamble. Recited Met. Man. Act*, 1855, *ante. Rep. by* 55 *&* 56 *Vict.* c. 19 (*Statute Law Revision*).]

The Metropolitan Board of Works to commence sewerage works as soon as may be.

1. The Metropolitan Board shall cause to be commenced as soon as may be after the passing of this Act, and to be carried on and completed with all convenient speed according to such plan as to them may seem proper, the necessary sewers and works for the improvement of the main drainage of the Metropolis (*b*), and for preventing, as far as may be practicable, the sewage of the Metropolis from passing into the River Thames within the Metropolis.

County Council may construct works on the shores and bed of the Thames.

18 & 19 Vict. c. 120.

2. The *Metropolitan Board of Works* (*c*), for the purposes of this Act, may construct any work through, along, over, or under the bed and soil and banks and shores of the River Thames (*d*), making compensation to all persons having any interest in any wharfs, jetties, or other property damaged by such works, as provided by the Metropolis Management Act, 1855, in respect of property injured under the powers of such Act (*e*).

Powers of taking land to apply for the purpose of deodorizing works.

18 & 19 Vict. c. 120.

3. The powers of taking land given by the said Metropolis Management Act, 1855 (*f*), and all other powers in such Act and this Act in relation to sewerage works (*g*), shall extend and be applicable as well to works for deodorizing sewage as to all other works under this Act, either within or beyond the limits of the Metropolis, and all such works shall be deemed works for the purpose of the sewerage or drainage of the Metropolis.

4—7. [*Power to raise money for purposes of Act. Rep. by Met. Bd. Works* (*Loans*) *Act*, 1869, *post, vol. ii. tit.* "*Loans.*"]

8. [*Application of money borrowed. Rep. by* 55 *&* 56 *Vict. c.* 19 (*Statute Law Revision*).]

Appointment of inspecting engineers.

9. It shall be lawful for the commissioners of Her Majesty's Treasury from time to time to appoint an engineer or engineers to

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(*a*) **Short title.** The above short title is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*b*) **Metropolis** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

(*c*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*d*) **Through, &c., the River Thames.** The County Council must obtain the consent of the Admiralty, pursuant to sec. 27, *post*, before exercising the powers conferred by this section. *Brownlow* v. *Met. Bd. Wks.*, 13 C. B. (N. S.) 768 ; 31 L. J. C. P. 140. If they do not, they will be liable to an action in the event of any damage arising from their interference with the bed or banks of the river, notwithstanding that they may have obtained the approval of the Thames Conservators as provided by sec. 28, *post*. *Ib.*

(*e*) **Compensation.** See the Met. Man. Act, 1855, sec. 135, and note (*f*) thereto, *ante*.

(*f*) **Taking land.** See the Met. Man. Act, 1855, secs. 150 to 156, *ante*.

(*g*) **Sewerage powers.** See the Met. Man. Act, 1855, sec. 135, *et seq.*, *ante*.

21 & 22 Vict. c. 104.

inspect the works to be constructed under this Act, and to report to such commissioners in relation to the expenditure thereon; and such engineer or engineers shall have full power and authority at all reasonable times to enter upon such works, and survey and inspect the same, and to inspect the accounts of the said *Metropolitan Board* (*h*), in relation thereto, for the purpose of reporting as aforesaid.

10—22. [*Power to raise main drainage rate. Rep. by Met. Bd. Wks. (Loans) Act*, 1869, *sec.* 50, *post, vol. ii. tit.* "*Loans.*"]

County Council to deodorize sewage, and defray expenses as under 18 & 19 Vict. c. 120.

23. The *Metropolitan Board of Works* (*h*), in the meantime and until the works required by this Act for the purification of the River Thames are completed, may do all such works and apply all such means as they may deem proper for deodorizing such sewage or otherwise protecting the public health from any injurious consequences therefrom, and may defray the expenses incurred for this purpose as the expenses incurred by the said Board under the said Metropolis Management Act, 1855, are therein directed to be defrayed (*i*).

County Council to execute works so as not to create a nuisance.

24. The said *Metropolitan Board* (*h*), shall cause all works to be executed under this Act to be constructed and kept so as not to be a nuisance, and shall, in deodorizing any sewage, and in disposing of any sewage or refuse from sewers, act in such manner as not to create a nuisance (*k*).

25. [*Repeal of sec.* 136, *and proviso of sec.* 144 *of Met. Man. Act*, 1855, *ante*].

26. [*Time for completion of works. Rep. by Met. Bd. Wks. (Loans) Act*, 1869, *post, vol. ii. tit.* "*Loans.*"]

Works, &c., to be approved of by the Admiralty.

27. No works upon the bed or shores of the said River Thames below high-water mark which may interfere with the navigation of that river shall at any time be commenced or executed under the provisions of this Act without the same having been previously approved of by the Lord High Admiral, or the commissioners for executing the office of Lord High Admiral (*l*), such approval to be from time to time specified in writing under the hand of the secretary to the Admiralty.

Works upon shore of the River Thames to be approved by the conservators of the River Thames.

28. In order to preserve the navigation of the River Thames, the plans of any work to be constructed under the authority of this Act upon the banks, bed, or shore of the River Thames, which may interfere with the free navigation of the said river, shall be approved by the conservators of the River Thames (*m*), in writing signed by their secretary, before such works are commenced, certifying that the works according to such plans will not interfere with the navigation of the River Thames.

Saving rights of the conservators of the River Thames.

29. Nothing in this Act contained shall extend or be construed to extend to prejudice or derogate from the rights of the conservators of the

(*h*) **Met. Bd. Wks.** Now the London County Council. See note (*c*) to sec. 1, *ante*.

(*i*) **Defray expenses.** Sec. 170 of the Met. Man. Act, 1855, provided for defraying the expenses of the Met. Bd. Wks., but that section is repealed and replaced by sec. 5 of the Met. Man. Amend. Act, 1862, *post*.

(*k*) **Nuisance.** See sec. 31, *infra*, as to prosecutions by the Secretary of State; and note (*h*) to sec. 135 of the Met. Man. Act, 1855, *ante*, as to liability for a nuisance.

(*l*) **Approved by Lord High Admiral.** See *Brownlow* v. *Met. Bd. Wks.*, *ante*, p. 229.

(*m*) **Approved by conservators.** This is in addition to, and not in substitution for, the approval of the Admiralty required by sec. 27. See *Brownlow* v. *Met. Bd. Wks.*, *ante*, p. 229.

River Thames, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at the time of the passing of this Act the said conservators did or might lawfully claim, use, or exercise (*n*), so far as such rights, power, authority, or jurisdiction may be exercised for preserving the free navigation of the River Thames. 21 & 22 Vict. c. 104.

Regulation of works under or over the River Lea.

30. No works under or over the main navigable channel of the River Lea shall at any time be commenced or executed under the provisions of this Act without leaving the top of any work under the navigation not less than twelve feet below high water, Trinity standard, and for any work over any part of the navigation without leaving the soffit of such work not less than eight feet six inches above high water, Trinity standard, with a clear span over the said river, inclusive of the towing-path thereof, of not less than fifty-four feet; provided that it shall be lawful for the trustees of the River Lea (*o*), by writing under their common seal, on the application of the *Metropolitan Board of Works* (*p*), to consent to an alteration or variation of the same dimensions or either of them.

On complaint of nuisance committed in execution of works, Secretary of State may order prosecution.

31. It shall be lawful for one of Her Majesty's principal Secretaries of State, at his discretion, on representation or complaint made to him of any nuisance committed in execution of any works, or in deodorizing any sewage, or in disposing of any sewage or refuse from sewers, or in any other manner under this Act, to cause inquiry to be made into the matter represented or complained of to him, and to direct such prosecution or prosecutions, or to take such other proceedings as he may think fit, in order to ensure the prevention or abatement of such nuisance as aforesaid.

Interpretation of terms.

32. In the construction of this Act the expression "deodorize" shall be deemed to include any process whereby the solid suspended matters in sewage may be precipitated or separated from the liquid before the discharge thereof, or whereby the noxious or offensive properties of sewage may be neutralized; and the expression "sewage" shall mean and include the contents of the sewers before the employment of such process.

Recited Act and this Act to be as one.

33. The said Act of the eighteenth and nineteenth years of Her Majesty and this Act shall be read together as one Act.

SCHEDULES.

[*Forms of assessment and precept. Rep. by Met. Bd. Wks. (Loans) Act*, 1869, *sec.* 50, *post, vol. ii. tit.* "*Loans.*"]

(*n*) **Jurisdiction of Thames Conservators.** See note (*y*) to sec. 3 (xiii.) of the Loc. Govt. Act, 1888, *ante*.

(*o*) **Trustees of River Lea.** The river Lea is now under the control of the Lea Conservancy Board. See note (*y*) to sec. 3 (xiii.) of the Loc. Govt. Act, 1888, *ante*.

(*p*) **Met. Bd. Wks.** Now the London County Council. See note to sec. 1, *ante*.

METROPOLIS MANAGEMENT AMENDMENT ACT, 1862 (*a*).

25 & 26 Vict. c. 102. An Act to amend the Metropolis Local Management Acts. [7th August, **1862**

[*Preamble. Recited Met. Man. Act*, 1855, *and Met. Man. Amend. Acts*, 1856 *and* 1858, *ante. Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

1. [*Recital as to Counters Creek Diversion, and Ravensbourne works, and that the cost thereof had been charged on certain parishes and places in the Metropolis. Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

Debts in respect of Counters Creek works, and part of debt in respect of Ravensbourne works, re-distributed and made payable out of moneys borrowed on the security of the main drainage rate.

The debts incurred in respect of the costs and charges of the Counters Creek Diversion works, amounting to the sum of forty-three thousand seven hundred and twenty-one pounds fifteen shillings, and in respect of the portion of the costs and charges of the said Ravensbourne works, amounting to the sum of ten thousand pounds, making together the sum of fifty-three thousand seven hundred and twenty-one pounds fifteen shillings, shall . . . be deemed to have become . . . transferred to and charged upon and shall stand charged upon the Metropolis at large, as defined by the firstly-recited Act, including the said parishes and places and parts of parishes and places comprised within the limits thereof; and all sums becoming payable under or required for the payment of any security given for the moneys so borrowed to the extent of the said sums of forty-three thousand seven hundred and twenty-one pounds fifteen shillings and ten thousand pounds, or of any interest due or to accrue thereon, shall be paid by the said *Metropolitan Board of Works* (*b*) out of any moneys which they may have already borrowed and raised or may hereafter borrow and raise on the security of the assessments or rates made or to be made by them for the Metropolis main drainage rate under the provisions of the said Metropolis Management Amendment Act, 1858 (*c*). . . .

21 & 22 ict. c. 104.

2. [*Repayment of sums expended on Victoria Street sewer. Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

Parishes, parts, and places on which debt on loan from the Clergy Mutual Assurance Society stands charged.

3. And whereas the said metropolitan commissioners of sewers did, in exercise of the powers vested in them by the said Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve (*d*), borrow and take up at interest from a certain society known as the Clergy Mutual Assurance Society, on the security of certain rates authorised to be levied under the last-mentioned Act, the sum of one hundred and forty thousand pounds, and there was previous to the first of November one thousand eight hundred and sixty due and owing to the said society from the

(*a*) **Short title.** The above short title is authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*b*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*c*) **Main drainage rate.** This rate was raised under the provisions of secs. 10—22 of the Met. Man. Amend. Act, 1858, *ante*. It was superseded by the consolidated rate raised under the Met. Bd. Wks. (Loans) Act, 1869, *post*, vol. ii. tit. "*Loans*." That rate is now superseded by the county rate. Loc. Govt. Act, 1888, secs. 3 (1), 40 (9), and 68, *ante*.

(*d*) **11 & 12 Vict. c. 112,** i.e., the Metropolitan Sewers Act, 1848. See note to sec. 145 of the Met. Man. Act, 1855, *ante*.

Metropolitan Board of Works, as the successors of the said metropolitan commissioners of sewers, in respect of the said loan, the sum of one hundred and five thousand pounds, and it is expedient accurately to ascertain and determine the several parishes, parts, and places on which the debt in respect of the said sum of one hundred and five thousand pounds shall stand charged, and on which moneys or rates are to be raised or levied for the payment of the principal and interest in respect of the same, and to ascertain and determine the proportions charged upon each: be it therefore enacted, that the said debt of one hundred and five thousand pounds shall be and stand charged upon and apportioned to the several parishes, parts, and places enumerated in schedule B. to this Act, in the several proportions specified in such schedule, and the said several parishes, parts, and places shall be deemed to be and shall be liable to the payment of the sums set against their respective names therein, and to the payment of interest thereon, and the moneys from time to time becoming payable under the said security, or required for or towards payment of the said debt or any part thereof, and the interest thereon, shall be raised by such Board upon such parishes, parts, and places respectively in manner provided in respect to the expenses of such Board in the execution of the firstly-recited Act: provided always, that credit shall be given for any sums paid off in respect of the said loan previous to the passing of this Act according to the several proportions specified in the said schedule. 25 & 26 Vict. c. 102.

Saving rights and remedies of persons holding securities.

4. Provided, that nothing in this Act contained shall prejudice, abridge, diminish, or affect the priority secured by the firstly-recited Act (*e*) to the persons respectively entitled to the mortgages, annuities, securities, and debts referred to in the one hundred and eighty-first section of that Act, and the first, second (*f*), and third sections of this Act, or the right of any or either of such persons to require and enforce payment of any principal or interest thereon, or in respect thereof, in, from, or out of all or any of the districts (*g*), assessments, rates, or moneys liable to such payment under or by virtue of their respective mortgages or securities, but all the securities, rights, and remedies of such persons respectively shall remain as good, ample, and effectual, to all intents and purposes, as if this Act had not been passed: provided also, that nothing herein contained shall prejudice or affect the power vested in the said Metropolitan Board under the firstly-recited Act to borrow moneys for paying off former securities.

5. [*Repeal of sec.* 170 *of Met. Man. Act,* 1855, *ante.*]

Sums to be assessed by County Council.

The *Metropolitan Board of Works* (*h*) shall from time to time ascertain and assess upon the several parts of the Metropolis the several sums which, having regard to the annual rateable value of the property in such parts respectively, ought to be charged thereon for defraying the expenses of the

(*e*) **Priority.** See sec. 181 of the Met. Man. Act, 1855, and note thereto, *ante*, p. 18ª.

(*f*) **Second section of this Act.** The second section contained no reference to the mortgages, &c., here referred to.

(*g*) **Districts.** The jurisdiction of the Metropolitan Commissioners of Sewers extended beyond the Metropolis as defined by sec. 250 of the Met. Man. Act, 1855, *ante*; and the present section saves the rights and remedies of persons holding securities under the Metropolitan Sewers Acts against the districts named in such securities. See note to sec. 145 of that Act.

(*h*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

25 & 26 Vict. c. 102.

said *Board* (*i*) in the execution of the firstly and secondly recited Acts and of this Act, and any such sums may be assessed wholly or in part in respect of expenses incurred or to be incurred, and also in respect of any unpaid balance of any former precept of the said Board: provided always, that such repeal shall not in any respect affect any Act, matter, or thing whatsoever done or commenced to be done under or by virtue of the said firstly and secondly recited Acts, or any proceeding taken or to be taken under the thirdly-recited Act, or to affect or prejudice, except as herein specially provided, in any way the rights or liabilities of any district or part under the one hundred and eighty-first section of the firstly-recited Act, but the same shall be judged of in all respects as if this Act had not been passed.

Basis of assessment.

6. For the purpose of making any assessment under the preceding section the *Board* (*i*) shall estimate the annual value (*k*) of property according to the estimate or basis on which any county rate (*l*) in force in any part of the Metropolis is made, or, where there is no such county rate, according to a like estimate or basis.

Mode of assessment by the County Council.

7. All such assessments to be made by the *Metropolitan Board of Works* (*i*), shall be assessed and charged by the said Board upon the same basis and in the same manner as the county rate (*l*), is assessed and charged by the justices under the statutes in force for assessing and charging county rates in England and Wales (*l*): provided always, that all precepts shall be issued and rates levied by the said *Board* (*i*), in manner directed by the several recited Acts relating to the better local management of the Metropolis and by this Act, so far as relates to making precepts and levying rates.

Assessments and precepts of County Council may be according to forms in schedule C.

8. The assessment of any moneys to be assessed by the *Metropolitan Board of Works* (*i*), for the expenses of executing the firstly and secondly recited Acts and this Act, and the precepts (*m*), for obtaining payment of moneys required by the Board for that purpose, may be according to the forms contained in schedule C. to this Act, or to the like effect.

Any vestry or district board may pay precept of County Council out of any money in their possession, and reimburse themselves out of sewer rate.

9. The vestry of any parish mentioned in schedule A. to the firstly-recited Act, or the board of works for any district to whom any precept of the *Metropolitan Board* (*i*), shall be directed, may, if they shall see fit, pay to the person or body authorised by the said *Metropolitan Board* (*i*), to receive the same the sum required by such precept, within such time as may be therein mentioned, out of any moneys in their possession at the time of their receiving such precept, or which may come into their hands at any time within two calendar months next after the service thereof; and all payments so made by any vestry or district board shall be charged by them

(*i*) **Met. Bd. Wks.** See note (*a*) on page 235.

(*k*) **Annual value.** So much of secs. 6, 7, and 13 as authorises or relates to the ascertaining the value of any hereditament with respect to the value of which the valuation provided for by the Valuation (Metropolis) Act, 1869, *post*, vol. ii. tit. "*Rating*," is conclusive, is repealed by sec. 77 of that Act, and also so much of any Act as applies the provisions so repealed.

(*l*) **County rate.** See the Loc. Govt. Act, 1888, secs. 3 (1), 40 (9), and 68 (4), and notes thereto, *ante*; and the County Rate Act, 1852, and the Valuation (Metropolis) Act, 1869, *post*, vol. ii. tit. "*Rating*."

(*m*) **Precepts.** The forms of precepts in schedule C. appear to be superseded by the precept for the county rate issued to the guardians by the County Council. See note to that schedule, *post*.

against and reimbursed to them out of the moneys which the said vestry or district board shall and which they are hereby required to raise and collect by virtue of such precept. 25 & 26 Vict. c. 102.

Vestries may include in the sewers rate precepts of county council.

10. Where, by any local Act of Parliament, the poor rate in any parish in schedules A. or B. to the firstly-recited Act is made by the vestry of such parish at a fixed period or periods in every year, it shall be lawful for such vestry, at their discretion, to include in the sewers rate (*n*) for their parish such sum or sums of money as they may consider necessary to meet any precepts received or to be received from the *Metropolitan Board of Works* (*o*), during the period for which such poor rate extends, to defray the expenses of the said *Board* (*o*), in the execution of the said first-recited Act; and, at the time of making such poor rate, also to make a separate rate for the metropolis main drainage (*p*), to meet the precept received or to be received from the *Metropolitan Board of Works* (*o*), for the sum assessed for such rate during the year, such rates to be levied in the same manner, for the same period, upon the same persons, and to be subject to the like provisions as the sewers rate by the first-recited Act, and to be contained in the same book or books as the poor rate of the said parish, but distinguishing the title of each of the said separate rates or assessments, and to be collected quarterly or otherwise by such person or persons as shall be appointed by the said vestry to receive and collect the same: Provided, that nothing herein contained shall prevent the said *Metropolitan Board of Works* (*o*) from requiring payment, or relieve the vestry of any parish from the payment, of the sums assessed by such Board at such times as they are now entitled by precept to require the same.

Sums collected in places in schedule C. to 18 & 19 Vict. c. 120 beyond amount of rate for main drainage rate, &c., to be placed to credit of such places.

11. Where, under or by virtue of any rate or assessment made by an assessor appointed by the said *Metropolitan Board of Works* (*o*), for the metropolis main drainage rate (*p*), any moneys shall have been or shall be collected in any place mentioned in schedule C. to the firstly-recited Act beyond the amount required to satisfy the amount of the assessment of the said *Board* (*o*) upon the said place, and the expenses of and incidental to the preparing, making, collecting, and levying such rate or assessment, the excess shall be placed by the said Board to the credit of such place, on account of the next assessment upon such place by the said *Board* (*o*) for the Metropolis main drainage rate.

Payment of sums assessed upon places in said schedule C.

12. For obtaining payment of the sum assessed upon any place mentioned in schedule C. to the firstly-recited Act (*r*), for the Metropolis main drainage rate (*p*), the said *Board* (*o*) shall issue a precept under their seal requiring payment of the amount mentioned in such precept to their treasurer, or into any bank therein mentioned, within such time or times as may be therein limited, and every such precept shall be directed to the

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(*n*) **Sewers rate.** See sec. 161 of the Met. Man. Act, 1855, *ante*, as to levying a separate sewers rate in each parish. Vestries must distinguish in their orders and demand notes the amount required to meet the precepts of the County Council and the amounts required for their own purposes. Met. Bd .Wks. (Loans) Act, 1869, sec. 24, *post*, vol. ii. tit. "*Loans*."

(*o*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*p*) **Main drainage rate.** See note to sec. 1, *ante*.

(*r*) **The places in schedule** (**C.**) of the Met. Man. Act, 1855, *ante*, are liable to contribute to the general county rate. Met. Bd. Wks. (Loans) Act, 1869, sec. 25, *post*, vol. ii. tit. "*Loans*."

25 & 26 Vict. c. 102.

masters of the bench, treasurer, governors, or other body or persons having the chief control or authority in any such place; and the body or persons to whom any such precept shall be directed shall raise and levy the money required by the same by means of a separate rate, in like manner and subject to the like provisions as the sewers rate to be made under the provisions of the firstly-recited Act (*s*) and this Act; and the said body or persons may appoint one or more persons to collect any such rate, and may pay him or them such salary, poundage, or allowance as they may deem just and reasonable, and may take such security from every such collector for the due execution of his duty as they shall think reasonable and proper; and the several provisions hereinafter contained with respect to the levying, paying over, and accounting for moneys levied by collectors by direction of any vestry (*t*) shall be applicable to every such collector; and the several enactments with respect to the levying of moneys by the said *Metropolitan Board* (*u*) on the default of vestries and district boards (*x*) shall apply in case of a default by the body or persons to whom any such precept may be directed by the said Board to levy and pay over the money therein named according to the exigency thereof.

County Council may amend assessments and precepts where necessary.

13. It shall be lawful for the *Metropolitan Board of Works* (*u*), in case of any omission or other inaccuracy in any assessment or precept which they have made or issued, to make such amendments or alterations therein as may render the same conformable to the provisions of the recited Acts and this Act; and it shall be lawful for the said *Board* (*u*), should they deem it requisite and proper, to revoke any precept which they may have issued, and to issue another precept in lieu thereof.

Overseers to pay over and account for moneys to vestries and district boards.

14. Whenever any vestry or district board shall by their order require the overseers (*y*) of any parish or place to levy and pay over the sum or sums of money which such vestry or board may require under the provisions of the said recited Acts or this Act, such overseers shall, within such period after the levying of the said sum or sums or any part thereof as the said vestry or board shall determine, pay over to the treasurer of the said vestry or board, or to any officer, or into any bank in such order mentioned, the amount mentioned in such order, and the excess, if any, which may have been levied beyond such amount, less the expenses of and incidental to the making and collecting of the same, and shall make out and deliver to the said vestry or board a true and perfect account in writing signed by them, and duly audited by the auditors appointed for such parish or place under the provisions of the firstly recited Act, of all moneys and rates received by them in pursuance of the said order, and shall for such purpose produce to the said auditors the vouchers, counterfoils or receipts for all payments made to or by them; and such auditors shall, for the purposes of the said audit, have all and every the powers and authorities given to the auditors named in the 195th section of the firstly recited Act; and in case any overseers shall fail to pay over such moneys or rates as aforesaid, or to render such account, or to produce such vouchers, counterfoils, and receipts for the space of twenty-one days after being thereunto required,

(*s*) **Sewers rate.** See sec. 161 of the Met. Man. Act, 1855, *ante*.
(*t*) **Accounting by collectors.** See sec. 14, *post*.
(*u*) **Met. Bd. Wks.** See note (*z*) on page 237.
(*x*) **Levying in default.** See sec. 168 of the Met. Man. Act, 1855, *ante*.
(*y*) **Overseer** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

they shall be subject to the penalties mentioned and contained in the sixty-fifth section of the firstly recited Act: Provided always, that where the term "Overseer" or "Overseers" shall extend to and include any vestry elected under the firstly hereinbefore recited Act, or any board of trustees or governors of any parish or place chosen under any local Act now in force, the provisions of this clause shall not be applicable to such vestry or board of trustees or governors, so long as the orders of the vestry or board shall be duly complied with and satisfied; and in every case in which the vestry does not appoint a collector or collectors to collect such rates, the said overseers are hereby authorised to employ and pay one or more collector or collectors to collect all such rates, and to take from every such collector security for his duly collecting such rates, and paying over and accounting for the same, and such security shall enure to the benefit of the overseers for the time being of every such parish or place, who shall have all such and the same remedies thereon as the overseers to whom such security was originally given. 25 & 26 Vict. c. 102.

Power to county council, vestries, and district boards to demand to be furnished with copies of poor rate, &c.

15. It shall be lawful for the *Metropolitan Board of Works* (*z*), or for the vestry of any parish mentioned in schedule A. to the firstly-recited Act, or for any district board, by order in writing, to require the vestry clerk, overseer, collector, or other person having the custody or control of any rate for the relief of the poor in any parish or place, or of any other rate, or of any book containing a copy of any such rate as aforesaid, to furnish, within such period, not being less than seven days, as shall be limited in such order, a true copy of such rate for the relief of the poor, or other rate, or of such copy thereof as aforesaid, or of such part or parts of the same as shall be specified in such order, on payment or tender for such copy at the rate of sixpence for every twenty-four names (inclusive of all the particulars in the several columns in the rate, so far as such particulars have reference to such names respectively), and the said copy shall be examined by and signed by such vestry clerk, overseer, collector, or other person, and shall be verified by his solemn declaration, if the said *Metropolitan Board* (*z*) or vestry or district board shall require the same, which solemn declaration any justice of the peace, or commissioner duly authorised, is hereby empowered to administer; and any person having the custody or control of such rate, or copy thereof, who shall refuse or neglect to make and deliver to such *Metropolitan Board* (*z*), vestry, or district board, or any person by them authorised to receive the same, such copy or extract, or to make such solemn declaration as aforesaid, shall be liable to a penalty not exceeding ten pounds for every such offence, and to a further penalty not exceeding ten pounds for each and every day during which the said offence shall be continued, to be recovered by a summary proceeding (*a*).

Expenses incurred by vestries named in schedule B. in execution of Acts to be paid by district boards.

16. Whenever the vestry of any parish mentioned in schedule B. to the firstly recited Act shall have lawfully incurred any expenses in the execution of the said recited Acts or this Act, the board of works for the district in which such parish may be situate shall, in case the payment of such expenses is not otherwise provided for, pay and discharge the amount of such expenses out of the moneys which they are by the firstly-

(*z*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*a*) **Summary proceeding.** See sec. 102, *post*.

25 & 26 Vict. c. 102.

recited Act authorised to raise for the payment of the expenses of the execution of such Act.

Recovery of monies assessed by county council on extra-parochial property for payment of debts.

17. The sums from time to time assessed by the *Metropolitan Board of Works* (*b*), upon or in respect of any extra parochial or other property which was included in any separate sewerage district under the Metropolitan commission of sewers, for or towards payment of any debt or debts charged upon such district at the determination of the said Act of the eleventh and twelfth *Victoria*, chapter one hundred and twelve (*c*), or of any interest thereon, for the payment of which provision is not otherwise made in the said recited Acts or this Act, shall be paid, on demand, to the said *Board* (*b*), by the occupier of the tenements or premises, or by the person or persons in receipt of any tolls or profits issuing out of any incorporeal hereditaments in respect of which such assessment shall be made, and every such sum may be recovered by the said *Board* (*b*) by an action at law or by a summary proceeding (*d*) before a justice, at the option of the said Board.

One summons only to issue for the recovery of rates.

18. In any proceedings before any justice or justices, by or on behalf of any vestry, district board, overseer, or collector, against the occupier or owner of any premises, for the recovery of any rates assessed under the said Acts or this Act which may be in arrear, all the rates for the recovery of which such proceedings shall be taken shall be included in the same summons (*e*), and the charge for such summons shall not exceed one shilling, and the signature of any justice or justices to any such summons may be either in writing or by a stamp affixed as such justice or justices may direct.

Parties lending money to vestries or district boards not bound to inquire into application of money, regularity of proceedings, &c.

19 (*f*) . . . No corporate body or person or persons lending or proposing to lend money to . . . any vestry or district board, under the provisions of the said Acts or this Act, or of any Act or Acts for amending the same, or of any Act or Acts empowering them or either of them to borrow money, shall be bound to see or obliged to inquire whether the money lent or proposed to be lent is advanced for the purposes of such Acts, nor to see or inquire into the application of the money so lent, or any part thereof; nor shall any such respective body or person or persons be bound or required to ascertain that the board or vestry so borrowing, or the meeting or meetings of such board or vestry, was or were properly constituted or convened, or that the proceedings at any meeting were legal or regular; and the common seal of every such board or vestry, impressed upon or affixed, pursuant to the order or resolution of such board or vestry, to any mortgage, bond, or other instrument which may have been made or granted by the said board or vestry, shall be binding and conclusive on the said board or vestry by whom any such

(*b*) **Met. Bd. Wks.** See note (*k*) on page 239.

(*c*) **Commissioners of sewers.** See note to sec. 145 of the Met. Man. Act, 1855, *ante*.

(*d*) **Action . . . summary proceeding.** See note to sec. 63, *post*.

(*e*) **Same summons.** By the Poor Rates Recovery Act, 1862 (25 & 26 Vict. c. 82), any number of local rates and taxes due from the same person may be included in the same complaint, summons, &c., and no costs shall be allowed in respect of several complaints, &c., where, in the opinion of the justices, one complaint, &c., would have been sufficient.

(*f*) **Sections 19 and 20.** The omitted words were repealed by 56 & 57 Vict. c. 54, Statute Law Revision.

mortgage, bond, or other instrument may have been so sealed and executed, and their successors (*g*). 25 & 26 Vict. c. 102.

Public Loans Commissioners authorised to lend money to vestries, &c.

20. It shall be lawful for the commissioners acting in the execution of the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter seventeen (*h*), and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, to make advances to the (*i*) . . . or to any vestry or district board, upon the security of all or any of the moneys or rates to be assessed or levied by them under the said recited Acts or this Act, and without requiring any further or other security than a mortgage of such moneys or rates, repayable by such instalments, within a period not exceeding thirty years, as shall in each case be agreed upon.

Power to stop up carriage or foot ways, &c.

21. It shall be lawful for the said *Metropolitan Board* (*k*), and they are hereby authorised, and empowered, during the construction of any works by them under the recited Acts or this Act, subject to the provisions of such Acts, to cause to be stopped up all or such part of the carriage or footway of any streets, roads, or ways as shall be necessary for the due execution of the said works.

Power to County Council to take lands, for roads, &c.

22. The compulsory powers of taking land given to the said *Metropolitan Board* (*k*) by the firstly recited Act, and the "Lands Clauses Consolidation Act, 1845" (*l*), shall, subject to the conditions and restrictions in the firstly recited Act contained, extend and be applicable to the taking of any lands which they may require for the purpose of making convenient roads or ways to or in connexion with any sewers or works vested or hereafter to be vested in the said *Board* (*k*), or which they may require for making roads or ways during the construction of any sewerage works, or for spoil banks or places of deposit of surplus earth or other materials in the execution of any such works.

Votes exceeding 20,000*l.* to be confirmed.

23. No resolution made or passed after the passing of this Act by the said *Metropolitan Board* (*k*), authorising the expenditure upon or the construction of any works the estimated cost of which shall amount to or exceed the sum of twenty thousand pounds, shall be carried into execution or be deemed valid and binding until the same shall have been confirmed at a subsequent meeting of the said *Board* (*k*) duly convened (*m*).

Maintenance of bridges, culverts, &c.

24. When the said *Metropolitan Board* (*k*) shall, in exercise of the powers conferred upon them, have constructed any bridges, culverts, arches, or

(*g*) **Conclusiveness of seal.** Where under a private Act and secs. 92—27 of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), the secretary to a company affixed the company's seal to a bond without having first been authorised to do so by a properly constituted meeting of the directors, it was held that the bond was not binding on the company. *D'Arcy* v. *Tamar, Kithill, and Callington Rly. Coy.*, L. R. 2 Ex. 158; 36 L. J. Ex. 37.

(*h*) **19 & 20 Vict. c. 17.** This Act was repealed and replaced by the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), and amending Acts, whereby a body of commissioners, styled the Public Works Loans Commissioners, was constituted, and empowered to make loans to persons and bodies for certain specified purposes.

(*i*) **Sections 19 and 20.** See note (*f*) on page 238.

(*k*) **Metropolitan Bd.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8). *ante*.

(*l*) **Compulsory powers of taking land.** See the Met. Man. Act, 1855, sec. 152 and notes thereto. *ante*.

(*m*) **Meeting duly convened.** See the London Coun. Counc. (Genl. Powers) Act, 1893, sec. 10, and schedule, *ante*, p. 114.

25 & 26 Vict. c. 102.

passages in connexion with any sewers or works, all such bridges, culverts, arches, and passages shall at all times after the construction thereof be maintained at the expense of the said board (*n*).

Formation and maintenance of bridges, arches, culverts, &c.

25. It shall be lawful for the said *Metropolitan Board* (*o*) to make and maintain any bridges, arches, culverts, passages, or roads over, under, or by the sides of or leading to or from any sewerage works constructed or to be constructed by them, which they may deem necessary and convenient for preserving the communications between lands through which the said works may have been or may be made or carried; provided that it shall be lawful for the said board to contract and agree with the owners and occupiers of lands to pay them or any of them compensation in lieu of making or maintaining such bridges or other works.

26. [*Time limited for completion of main drainage works. Rep. by Met. Bd. Wks. (Loans) Act*, 1869, *post, vol. ii. tit.* "*Loans.*"]

As to trapping of gullies connected with main sewers.

27. No gully or ventilating shaft immediately connected with or appertaining to, or which hereafter may be immediately connected with or appertain to, any sewer vested in the *Metropolitan Board of Works* (*o*), shall be trapped, covered, or closed up without previous notice in writing being given to the said board, nor if the said board or their engineer within one week after the giving of such notice shall express in writing their or his objection to the same.

Powers as to sewerage not to be transferred to County Council without their consent.

28. Notwithstanding the provision contained in the eighty-ninth section to the firstly recited Act, relative to the transfer by vestries and district boards to the *Metropolitan Board of Works* (*o*) of their powers and duties in relation to sewerage and drainage, it shall not be lawful for any vestry or district board to transfer to the *Metropolitan Board of Works* (*o*) any such powers or duties without the previous consent in writing of the said *Metropolitan Board* (*o*).

Orders to be made by committee on appeals against acts of vestries and district boards.

29. Under the provisions of the two hundred and eleventh and two hundred and twelfth sections of the firstly recited Act, empowering the committee of appeal of the *Metropolitan Board of Works* (*o*) to hear and determine an appeal against any order or Act of any vestry or district board, the said committee may allow or dismiss the appeal, or quash or confirm or vary the order appealed against.

Committee empowered to make improvement rates, &c. for expenses of works of private improvement executed by the Commissioners of Sewers, and take other proceedings in relation thereto.

30. In any case in which the metropolitan commissioners of sewers have incurred any expenses authorised by the Act of the eleventh and twelfth years of Her Majesty, chapter one hundred and twelve (*p*), to be paid by an improvement rate, or as charges for default, it shall be lawful for the committee of appeal, appointed under and in pursuance of the two hundred and twelfth section of the firstly recited Act, to levy improvement rates or charges for default for the recovery of the whole of such expenses, or such portion thereof as shall still remain due and unpaid, in the manner directed by the said Act of the eleventh and twelfth years of the reign of Her Majesty, chapter one hundred and twelve, and the said committee shall have all the rights and remedies for the recovery thereof which are vested

(*o*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*p*) **Commissioners of sewers.** See note to sec. 145 of the Met. Man. Act, 1855, *ante*.

in the said *Metropolitan Board* (*q*) in that behalf (*r*); and if any person liable to the payment of any such improvement rate or charges for default fail to pay the same when due, or for the space of fourteen days after the same shall have been lawfully demanded, the said committee of appeal may and they are thereby empowered to summon the defaulter to appear before them to show cause why such improvement rate or charges for default so in arrear should not be paid; and in case the defaulter fail to appear according to the exigency of the summons, or if no sufficient cause for non-payment be shown, the said committee may by warrant under the seal of the *Board* (*q*) cause the amount of such improvement rates or charges for default so in arrear to be levied by distress of the goods and chattels of the defaulter. 25 & 26 Vict. c. 102.

31. [*Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

Communications between sewers in different parishes or districts, and payment of compensation, &c. in consideration thereof.

32. Whereas it is in and by the firstly recited Act provided that the *Metropolitan Board of Works* (*q*) shall from time to time, in order to secure the efficient maintenance of the main and general sewerage of the Metropolis, make such general or special orders as to them may seem proper for the guidance, direction, and control of the vestries of parishes and district boards in the levels, construction, alteration, maintenance, and cleansing of sewers in their respective parishes or districts, and for securing the proper connexion and intercommunication of the sewers of the several parishes and districts, and their communication with the main sewers vested in the said *Metropolitan Board* (*q*), and generally for the guidance, direction, and control of vestries and district boards in the exercise of their powers and duties in relation to sewerage, and all such orders shall be binding upon such vestries and boards (*s*): be it enacted, that whenever the said *Metropolitan Board* (*q*) shall, in exercise of the said power, have ordered that any sewer or sewers vested in the vestry, district board, or other body acting for any parish or place comprised in the schedules of the firstly recited Act, having control over the sewers in one parish, district, or part, shall, for the purpose of outfall or otherwise, be connected with any sewer or sewers vested in the vestry or district board of another parish, district, or part, or other body having control over the sewers in such parish, district, or part, it shall be lawful for the vestry, district board, or other body, for the drainage of whose parish, district, or part such connexion shall be required, and at whose instance and request such order shall have been made, to execute all necessary works as well within their own parish, district, or part as within any other parish, district, or part which shall be specified in the said order of the *Metropolitan Board* (*q*) for effecting such connexion: provided that every communication to be made by any vestry, district board, or other body with any sewer out of their own parish, district, or part shall be made under the supervision and to the satisfaction of the board, vestry, or other body having control over such last-mentioned sewer; and where it shall appear to the said *Metropolitan Board* (*q*) to be equitable and just, under the circumstances of the case, that any vestry, board or other body so connecting their sewers with the sewers vested in another vestry, district board, or other body

(*q*) **Met. Bd. Wks.** See note (*o*) on page 240.
(*r*) **Improvement rate.** The Met. Man. Act, 1855, sec. 182, *ante*, empowered the Met. Bd. Wks. to levy such improvement rates as remained due.
(*s*) **Orders as to sewers.** See the Met. Man. Act, 1855 sec. 138, *ante*.

25 & 26 Vict. c. 102.

should pay such last-mentioned vestry, board, or body any compensation or remuneration, either in one sum or by yearly or other payments, for the use of their sewer, it shall be lawful for the said *Metropolitan Board* (*t*) to order and direct payment of such compensation or remuneration accordingly, and the vestry, board, or other body to whom any such payment shall be directed to be made may recover the same from the vestry, board, or body directed by such order to make such payment, either by action at law or before a justice of the peace in a summary manner.

33. [*Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

Plan, &c. of works affecting railways or canals to be submitted to companies.

34. Where any works authorised by this or the recited Acts will interfere with any railway or canal (*u*), the board (*x*) or vestry proposing to construct such works shall before commencing the same give notice in writing of their intention so to do to the company owning such railway or canal, and shall, together with such notice deliver a plan and section showing the nature of such interference; and if within seven days after the receipt of such notice the company shall by writing, addressed to the board (*x*) or vestry, object to the manner in which it is intended to interfere with such railway or canal respectively, on account of the probable interruption or endangering of the traffic thereon, the same works shall not be commenced; and it shall thereupon be referred to an engineer, to be appointed by the Board of Trade, on the application of either party, to determine the manner of executing the said works, and the determination come to by such engineer shall be binding on both parties.

Line of railway not to be altered.

35. Provided always, that it shall not be lawful for any board (*x*) or vestry to alter the level of any railway or canal (*u*), unless with the consent of the company owning the same respectively, or, if that be refused, with the consent of the Board of Trade; and provided also, that nothing in this Act contained shall take away or affect the right of any railway or canal company to compensation for the taking or injuriously affecting of any land or property of such company (*y*) or for or by reason of the interruption of any traffic on their railway or canal, or for any damages, costs, or expenses which such company may be required to pay in consequence of such interruption.

36. [*Inspectors of votes to appoint umpire. Rep. by Loc. Govt. Act*, 1894, *sec.* 89, *post.*]

Vestries and district boards may appoint their days of meeting.

37. Every vestry and district board constituted under the firstly recited Act, or this Act, may hold their meetings on such days of the week, except Sundays, as they may from time to time determine, notwithstanding any provision to the contrary contained in any local Act; and any business which, by any local or other Act of Parliament, or custom, should be done by any such vestry on a certain day, may be done at any meeting of such

(*t*) **Met. Bd. Wks.** See note (*o*) on page 240.

(*u*) **Canal.** As to bridges over canals, see sec. 72, *post*.

(*x*) **Board** here included not only district boards of work, but also the Met. Bd. Wks. The provisions of this section will therefore apply to the County Council as their successors. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*y*) **Compensation.** Compare this section with the provisions for compensation in secs. 69 and 135 of the Met. Man. Act, 1855, *ante*, and sec. 68 of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18).

vestry duly convened (*z*) for the purpose, and held within seven days next before or after (*a*) such certain day as aforesaid: *provided that where the hour or time for holding such meetings is fixed by the local Act they shall continue to be held at the same hour or time* (*b*). 25 & 26 Vict. c. 102.

Certiorari for auditors' allowances or disallowances.

38. Notwithstanding anything in the one hundred and ninety-fifth section of the firstly recited Act contained to the contrary, if any person aggrieved by any allowance, disallowance, or surcharge by any auditors of the accounts of any vestry or district board require such auditors to state the reasons for the said allowance, disallowance, or surcharge, the auditors shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, disallowance, or surcharge to apply to the Court of Queen's Bench for a writ of certiorari to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of certiorari for the removal of orders of justices of the peace, except that the condition of the recognizance shall be to prosecute such certiorari at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditors or their successors, within one month after the same may be confirmed, their full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditors or their successors, who shall in return to such writ return a copy under the hands of a majority of them of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as they may incur in such defence out of the funds of the vestry or district board respectively interested in the decision of the question, unless the said court make any order to the contrary; and on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditors was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same, and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such certiorari to be paid by the vestry or district board to which such accounts relate, as to such court may seem fit, which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

(*z*) **Meeting duly convened.** See sec. 9 of the Met. Man. Amend. Act, 1856, *ante*, for regulations for convening meetings of vestries.

(*a*) **Within seven days.** See note to sec. 211 of the Met. Man. Act, 1855, *ante*, for the meaning of this expression.

(*b*) **Hour of meeting.** This proviso is superseded by sec. 31 (3) of the Loc. Govt. Act, 1894, *post*, p. 535, which enacts that "nothing in any local or personal Act shall prevent any vestry in the county of London from holding their meetings at such time as may be directed by the vestry." Meetings of district boards are held on and at such day, time, and place as the boards may from time to time appoint. Met. Man. Act, 1855, sec. 39, *ante*, p. 128.

25 & 26 Vict. c. 102.

Provision in case of a vestryman being returned for more than one ward.

39. If any person be returned to serve in any vestry for more than one ward, he shall on or before the next meeting of the vestry after such election signify in writing to the clerk of such vestry his decision as to the ward which he may desire to represent on such return; and if before or at such meeting he shall refuse or neglect so to do, the vestry shall determine the ward which he shall represent; and the vacancy occasioned by such determination or decision shall be filled up by an election to be held for that purpose within one month from the date of such determination or decision, such elections to be conducted in the like manner as the annual elections of vestrymen.

Elections to be held annually for supplying vacancies occasioned by expiration of term of office.

40. [*Repeal of sec.* 35 *of Met Man. Act,* 1855, *ante.*] The vestry constituted by the said Act in every parish mentioned in the second column of schedule B. to the same Act shall, on the first Wednesday in the month of June in every year, elect so many persons qualified (*c*) . . . to be members of the board for the district in which such parish is comprised, as may be necessary for supplying the vacancies among the members of such board elected for such parish occasioned by expiration of the term of office of the members going out of office at the time of such election.

As to division into wards when parish contains 2,000 houses.

41. When at any time, upon any account taken of the population by the authority of Parliament, any of the parishes within the Metropolis not now divided into wards for the purpose of electing vestrymen shall be found to contain more than two thousand rated householders, it shall be lawful for the *Metropolitan Board of Works* (*d*), upon the application in writing of the vestry, or of not less than five hundred rated householders of the parish, to divide such parish into wards, and to determine and set out the number, extent, limits, and boundary lines of such wards (*e*), but so nevertheless that no ward shall contain less than five hundred rated householders, and that the whole number of wards shall not exceed eight (*f*); and the *Metropolitan Board* (*d*) shall apportion among the several wards the number of vestrymen to be elected for such parish, and shall, in assigning the number of vestrymen to each ward, have regard, as far as in their judgment is practicable, as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated; and the number of vestrymen assigned to each ward shall be a number divisible by three, and a copy of the particulars of such division and apportionment shall be forthwith transmitted to one of Her Majesty's principal Secretaries of State for his approval, and also to the vestry clerk of the parish to which such division and apportionment relate; and the said particulars shall, within seven days after such transmission, be published by the said Board in the London Gazette; and at the expiration of not less than two calendar months the said Secretary of State shall, if he approve of the same, publish the said particulars again with his

(*c*) **Section 40.** The omitted words are repealed by the Loc. Govt. Act, 1894, sec. 89, *post.*

(*d*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

(*e*) **Division into wards.** As to the division of parishes into wards on the passing of the Met. Man. Act, 1855, see sec. 3 of that Act, *ante.* As to rearranging and determining the number, boundaries, &c. of the wards in any parish by the County Council, see the London Coun. Counc. (Genl. Powers) Acts, 1893, sec. 15, and 1895, sec. 42, *post*, p. 524.

(*f*) **Shall not exceed eight.** This limit is removed on the rearrangement of wards by the County Council. Lon. Coun. Counc. (Genl. Powers) Act, 1895, sec. 42, *post*, p. 524, *n.*

approval affixed thereto in the London Gazette; but if the said Secretary of State disapprove of the proposed division into wards or apportionment of vestrymen, then he shall, subject, however, to all the above limitations, make such other division or apportionment as in his judgment shall be more conducive to a fair representation in the vestry of the interests of the ratepayers of the said parish, and shall publish the particulars of such fairer division and apportionment in the London Gazette, and the parish shall, after such publication by him in the London Gazette, be deemed to be divided into such wards so determined and set out. 25 & 26 Vict. c. 102.

42. [*Rep. by* 57 *&* 58 *Vict. c.* 56 (*Statute Law Revision*).]

43. [*Annual report of officer of health. Rep. and replaced by the Pub. Health* (*London*) *Act*, 1891, *secs.* 106 *and* 142, *post.*]

44. It shall be lawful for the owners or occupiers of any land or premises in any parish, district, or part within the limits of the Metropolis as defined by the firstly recited Act, with the consent and subject to the regulations and conditions hereinafter mentioned (*g*), to construct sewers at their own expense for the purpose of draining such land or premises; and it shall be lawful for any vestry or district board in whom the sewers in any parish, district, or part are vested, if they shall deem it just and proper so to do, to contribute out of the rates under their control applicable to the execution of works of sewerage to their costs of any sewers constructed for the purpose aforesaid. Owners and occupiers of land may execute works of drainage at their own expense.

45. Any vestry or district board intending to construct any sewer shall, before commencing any works for that purpose, submit to the *Metropolitan Board of Works* (*h*) a plan of the street or place in which it is proposed to construct such sewer, drawn to such a convenient scale or scales as the said *Metropolitan Board* (*h*) shall direct, and there shall be shown on such plan the position, course, and dimensions of the proposed sewer, with a section or sections thereof, and such other particulars in relation thereto as the said *Metropolitan Board* (*h*) shall deem necessary and require, and no such sewer or works shall be proceeded with without the approval in writing or contrary to the directions of the said Board. Vestries, &c. to submit plans of new sewers to County Council.

46. Three clear days' notice in writing shall be given to the *Metropolitan Board of Works* (*h*) by any vestry or district board previously to the connexion of any sewer or drain with a main sewer; and the necessary junction or communication for that purpose shall be made by such vestry or district board to the satisfaction of the said *Metropolitan Board* (*h*). Communications with main sewers.

47. Every person other than a vestry or district board intending to make or branch a sewer, either into a sewer vested in the *Metropolitan Board of Works* (*h*), or into a sewer vested in any vestry or district board, shall in the first instance lay the plan and section thereof before, and apply for the sanction of, the vestry or district board of the parish, district, or part in which such last-mentioned sewers shall be situate; and Private parties before branching sewers into main or district sewers to apply for sanction of vestries, &c.

(*g*) **Conditions hereinafter mentioned.** See secs. 47—51 and 61, *post.* Penalties for making sewers contrary to plans approved by the County Council, or branching sewers into any sewer vested in that body, or in any vestry or district board, are imposed by the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), secs. 4 and 5, *post.*

(*h*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

25 & 26 Vict. c. 102.

no sewer shall be begun to be made by such person until the sanction in writing of such vestry or district board shall have been obtained.

Vestries, &c., before sanctioning sewers, to apply for approval of County Council.

48. Before any vestry or district board shall sanction the construction of any such sewer they shall submit the plan and section (*i*) thereof to the *Metropolitan Board of Works* (*k*) for their approval, in the same manner as if such sewer were proposed to be constructed by such vestry or district board; and no vestry or district board shall sanction the construction of any such sewer without the approval in writing of the said *Metropolitan Board* (*k*) first had and obtained.

Seven days' notice must be given before drains can be branched into main sewers.

49. All persons intending to make or branch any drain into a sewer vested in the *Metropolitan Board of Works* (*k*) shall, seven clear days before commencing any works for that purpose, make written application to the vestry or board of the parish, district, or part in which such sewer shall be situate, accompanied by a plan showing such particulars as may be required by any byelaw or resolution of the said *Metropolitan Board* (*k*); and no such works shall be commenced until the sanction in writing of the said vestry or district board shall have been given (*l*).

Regulations as to abandonment, alteration, &c. of design for sewers previously approved.

50. When it shall be desired to abandon either wholly or in part, or to extend, contract, or alter, any design for a sewer previously submitted to and approved by the *Metropolitan Board of Works* (*k*), notice in writing of such desire shall be given by the vestry or district board by whom such approval shall have been obtained to the said *Metropolitan Board* (*k*), accompanied by plans and sections showing the nature of the abandonment, extension, contraction, or alteration desired; and no such abandonment, extension, contraction, or alteration shall be made without the previous approval in writing of the said *Metropolitan Board* (*k*); and no person other than a vestry or district board shall abandon wholly or in part, or extend, contract, or alter in construction, any sewer approved or sanctioned by the *Metropolitan Board of Works* (*k*) without the previous sanction in writing of the vestry or district board in whose parish or district the works were intended to be executed, to be applied for and given in the same manner as hereinbefore directed with respect to new sewers.

In case sewer be not constructed within 12 months, fresh application to be made.

51. In case any sewer sanctioned and approved by the *Metropolitan Board of Works* (*k*) as hereinbefore provided shall not be constructed or executed within twelve calendar months from the date of such sanction or approval, the works for the construction of such sewer shall not be executed without a fresh permission by the *Metropolitan Board* (*k*), and their written sanction that the necessary works for the construction of such sewer may proceed, to be applied for and obtained in manner hereinbefore provided with respect to the original permission for the construction of such sewer.

(*i*) **Vestry, &c. shall submit plan.** It was held to be no answer to a *mandamus* requiring a district board to submit to the Met. Bd. Wks. plans of sewers laid before them in pursuance of sec. 47 that that Board had refused to sanction the making of the roads on the land in which it was intended to lay the proposed sewers, the district board itself having no other objection to offer to such plans. *Reg.* v. *Wandsworth Dist. Bd.*, 49 J. P. 806.

(*k*) **Met. Bd. Wks.** See note (*h*) on page 245.

(*l*) **Branching drain into sewer.** For further regulations as to branching drains into sewers, and penalties for infringement thereof, see sec. 46, *ante*, and sec. 61, *post*, and secs. 4 and 5 of the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), *post*.

25 & 26 Vict. c. 102.

Expense of constructing sewers in new streets and streets laid out since Jan. 1st, 1856.

52. Where any sewer shall be constructed by any vestry or district board in or for the drainage of any new street (*m*), or of any house or houses erected since the first day of January one thousand eight hundred and fifty-six, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed by the owners (*n*) of such street or houses and of the land bounding or abutting (*o*) on such street respectively, and the said expenses shall be apportioned by the vestry or district board in such proportions as they may deem just (*p*), and the amount charged upon or payable in respect of each house or premises shall be payable before the works shall be commenced, during their progress, or after their completion, as the vestry or district board shall in each case determine, either in one sum or by instalments, within such period, not exceeding twenty years, as the vestry or district board shall direct; and any such sum or instalments shall be recoverable from the present or any future owner (*q*) of the said house or premises either by action at law or in a summary manner (*r*) before a justice of the peace, at the option of the vestry or board.

Expense of constructing sewers where there had before been only open sewers.

53. Where any sewer shall be constructed by any vestry or district board in a street (*s*) in which previously to such construction there had been no sewer (*t*), or only an open sewer, but where sewers rates have been levied previously to such construction, the expense of constructing such sewer and the works appertaining thereto, including the cost of gullies, side entrances, lengths of sewer at the intersection of streets, and other incidental charges and expenses, shall be borne and defrayed in part only by the owners (*u*) of the houses situate in and of the land bounding

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(*m*) **New street** is defined by sec. 112, *post*.

(*n*) **Owner** is defined by sec. 250 of the Met. Man. Amend. Act, 1855, *ante*.

(*o*) **Bounding or abutting.** See note (*m*) to sec. 77, *post*.

(*p*) **Apportionment.** See note (*p*) to sec. 77, *post*. Land may be charged in a less proportion than house property. Sec. 54, *post*. There is no limit of time within which the amount payable is to be apportioned, and an apportionment of the cost of constructing a sewer which was not made until eight years after its completion was held to be valid. *Bradley* v. *Greenwich Dist. Bd.*, 3 Q. B. D., 384; 47 L. J. M. C. 111.

(*q*) **Future owner.** See note (*s*) to sec. 77, *post*.

(*r*) **Action . . . summary manner.** See note to sec. 63, *post*.

(*s*) **Street** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*. The word "street" in the present section includes "new street" as defined by sec. 112, *post*, as well as old streets. *Sheffield* v. *Fulham Dist. Bd.*, 1 Ex. D. 395; *St. John's, Hampstead*, v. *Cotton*, 12 App. Cas. 1; 55 L. J. Q. B. 213.

(*t*) **Previously no sewer.** Where an owner, with the sanction of the Met. Bd. Wks., constructed a sewer in a new street, and the district board subsequently took the sewer up and laid down a new one, it was held that he was not liable to pay any portion of the cost. *Fulham Dist. Bd.* v. *Goodwin*, 1 Ex. D. 400; 40 J. P. 372. See also *St. Martin-in-the-Fields* v. *Ward*, *ante*, p. 137; *Bonella* v. *Twickenham Loc. Bd.*, 20 Q. B. D. 63; 57 L. J. M. C. 1; *Walthamstow Loc. Bd.* v. *Staines* (1891), 2 Ch. 606; 60 L. J. Ch. 738.

(*u*) **In part only by owners.** Where a district board constructed sewers in streets laid out since 1862, in which there were no sewers, but sewer rates had for many years been levied in respect of the houses abutting on the streets, it was held that an apportionment of the whole of the cost on the frontagers was invalid, as it did not provide for payment of a portion of the cost out of the sewers rate. *Sheffield* v. *Fulham Dist. Bd.*, 1 Ex. D. 395. If a rate is made charging the whole cost on the owners, appeal should be made to quarter sessions, in order to claim relief under this section. The question cannot be entertained by the magistrate on an application for a distress warrant to recover the rate. *Bates* v. *Plumstead Overseers*, 64 L. J. M. C. 127; 59 J. P. 118.

25 & 26 Vict. c. 102.

and abutting (*x*) on such street respectively; and the amount to be borne by such owners shall be determined by the vestry or district board in each particular case, and the residue of such expenses shall be defrayed by the vestry or district board out of the sewers rates levied in their parish or district; and the amount so charged by the vestry or district board upon or in respect of each house or premises shall be payable, either before the works shall be commenced, during their progress, or after their completion, as the vestry or board shall in each case determine, either in one sum or by instalments, within such period, not exceeding twenty years, as the vestry or board shall direct; and any such sum or instalment shall be recoverable from the present or any future owner (*y*) of such house or premises either by action at law or in a summary manner (*z*) before a justice of the peace, at the option of the vestry or board: provided that no street or property in respect of which sewers rates have been levied for five years prior to the first day of January one thousand eight hundred and fifty-six shall be subject to be charged under the provision contained in this section (*a*).

Land may be charged in a less proportion than house property.

54. In apportioning the cost of constructing sewers under the provisions contained in the two last preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, it shall be lawful for any vestry or district board to charge the owners of land (*b*) bounding or abutting on any street in a less proportion than the owners of house property, should they, under the circumstances of the case, deem it just and expedient so to do.

Where estimated expenses exceed actual costs, difference to be refunded by, and where less to be paid to, vestry, &c.

55. In any case in which the estimated expenses shall exceed the actual cost of constructing sewers under the provisions contained in the said two preceding sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, then the difference between such estimated expenses and the actual cost shall be repaid by the vestry or board to the owners of the houses or premises by whom the amount of any such estimated expenses may have been paid; and in any case in which the estimated expenses shall be less than the actual cost of constructing any sewer or sewers under the provisions aforesaid, then the owners of the said houses or premises shall, on demand, pay to the said vestry or board such further sum of money as, together with any sums already paid, will make up the amount of the actual cost; and the vestry or district board shall have all the same remedies for the recovery of such further sum as are hereinbefore given for recovering any expenses apportioned by vestries or district boards under the said enactments.

Vestry or district board may defray part of expense out of sewer rates.

56. It shall be lawful for the vestry or district board, should they deem it reasonable and just so to do, at their discretion to defray, out of the sewers rates to be levied in their parish or district, any portion of the

(*x*) **Bounding or abutting.** See note (*m*) to sec. 77, *post*.
(*y*) **Future owner.** See note (*s*) to sec. 77, *post*.
(*z*) **Action . . . summary manner.** See note (*q*) to sec. 63, *post*.
(*a*) **Exemptions.** Where sewers rates had been levied for five years prior to 1856 in respect of lands adjoining a turnpike road it was held that such lands were not liable to be charged under this section in respect of a sewer constructed when the road became a new street. *St. John's, Hampstead* v. *Cotton*, *supra*.
(*b*) **Land.** Brickfields were held to be "land" within a similar exemption contained in the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90). *Crayford* (*Overseers of*) v. *Rutter* (1897), 1 Q. B. 650; 61 J. P. 341.

expenses of and incident to the construction of sewers under the provisions contained in the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties. 25 & 26 Vict. c. 102.

Appeal against orders of vestries, &c., as to amount or apportionment of expenses.

57. Any person who may deem himself aggrieved by any order or resolution of any vestry or district board in relation to the expenses of constructing works under the said two sections of this Act relating to the construction of sewers wholly or partly at the cost of private parties, or the apportionment of such expenses, may appeal to the *Metropolitan Board of Works* (*c*) against such order or resolution, subject in all respects to the directions and provisions contained in the two hundred and eleventh section of the firstly recited Act, and the section of this Act relative to the form of order to be made by the committee of appeal of the *Metropolitan Board of Works* (*c*) against orders or acts of vestries or district boards.

Execution of works of sewerage by vestries and district boards beyond the limits of the Metropolis.

58. [*Recital of Met. Man. Act*, 1855, *sec.* 69. *Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).] Whenever it shall be found necessary by the vestry of any parish mentioned in schedule A. to the said Act, or by the board of works of any district mentioned in schedule B. to the said Act, for the purpose of executing works for any of the purposes mentioned in the said section, to carry any sewer or work beyond the limits of the Metropolis as defined by the said Act, it shall be lawful for any such vestry or district board to execute works in part situate beyond or without such limits, and to cleanse, repair, and maintain such works as they shall from time to time deem necessary: provided always, that no work shall be performed or commenced by any vestry or district board beyond the limits of the Metropolis as above defined, except for the purpose of continuing or forming part of a work commenced or executed within their respective parish or district; nor shall any such works be performed or commenced without the consent in writing of the *Metropolitan Board of Works* (*c*) for that purpose first had and obtained, nor without the consent of the vestry or district board, or authorities of the parish or place through which the work may pass; but if any such vestry or district board or authority shall refuse such consent, one of Her Majesty's chief Secretaries of State shall have authority under this Act to decide whether such consent ought to be withheld, and such Secretary of State may make such order as to him shall seem just; but nothing herein contained shall apply to any work for the purpose of the main drainage of the Metropolis under the recited Acts: provided also, that no new sewer, either within or beyond the limits of the Metropolis, shall be made or executed by any vestry, district board, or other body having control over sewers within the Metropolis without the previous approval of the said *Metropolitan Board* (*c*). Proviso.

Contribution to cost of main sewers and sewers built since January 1st, 1856, or hereafter to be built.

59. The provisions contained in the eightieth section of the firstly recited Act, empowering vestries and district boards to order, at their discretion, under the circumstances therein mentioned, such sums as they shall deem just to be paid and contributed by the owners of houses towards the expense of the construction of sewers into which drains from such houses shall be made or branched, shall be extended, and the same are hereby extended and made applicable to the *Metropolitan Board of Works* (*c*) with respect to houses draining into main sewers constructed at

(*c*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

25 & 26 Vict. c. 102.

the expense of any person or body other than any commissioners of sewers, and which are vested in the *Metropolitan Board* (*d*); and the same provisions are hereby extended and made applicable to all sewers within the limits of the Metropolis as defined by the firstly recited Act, built since the first day of January one thousand eight hundred and fifty-six, or which may hereafter be built at the expense of any person or body other than the *Metropolitan Board of Works* (*d*), or any vestry, district board, or other body having control over sewers within the Metropolis, into which house drains may be made or branched; and the said *Metropolitan Board* (*d*), vestry, district board, or other body, as the case may be, may at their discretion accept payment of contribution from the owners of houses draining into such sewers respectively, either in one sum or by instalments within any period not exceeding twenty years, with interest after a rate not exceeding five pounds by the hundred by the year, as the said Board, vestry, or other body shall in each case determine, and shall on receipt of any such contribution or instalment pay over the same to the person or body entitled thereto; and every sum payable to the said Board, vestry, or other body by way of contribution to the construction of sewers shall be recoverable from the present or any future owner (*e*) of the said premises either by action at law or before a justice of the peace in a summary manner (*f*) at the option of the board or vestry: provided that nothing herein contained shall prejudice or affect the right of vestries and district boards to demand and recover from the owners of houses and land the sums charged upon them by such vestry and district boards respectively under the provisions contained in this Act (*g*).

Where time is given for payment of contribution, the County Council shall keep a register.

60. In all cases in which time shall be given by the *Metropolitan Board of Works* (*d*), or by any vestry, district board, or other body for the payment of any contribution to the cost of a sewer as aforesaid, the *Metropolitan Board of Works* (*d*) shall keep a register of all such orders for contribution, which register shall contain the description of the premises, the amounts payable, the periods for payment, and other necessary particulars; and such register shall be open to inspection by parties interested during office hours without payment of fee or reward; and every vestry, district board, or other body giving time for payment of any such contribution as aforesaid shall forthwith transmit to the said *Metropolitan Board* (*d*) a copy of their order or resolution in that behalf made, and such other particulars in relation thereto as the said *Board* (*d*) may deem necessary and require.

Regulations respecting openings into sewers.

61. [*Repeal of sec. 77 of Met. Man. Act, 1855, ante.*] No person shall make or branch any sewer or drain, or make any opening into any sewer vested in the *Metropolitan Board of Works* (*d*), or in any vestry or district board, without the previous consent in writing of such board or vestry (*h*): provided that it shall be lawful for any person, with such consent, at his own expense, to make or branch any drain into

(*d*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*e*) **Future owner.** See note (*m*) to sec. 77, *post*.

(*f*) **Action . . . summary manner.** See note to sec. 63, *post*.

(*g*) **Provisions in this Act.** See secs. 52 and 53, *ante*.

(*h*) **Previous consent.** Where a railway company owned four cottages, situate immediately outside the Metropolis, which drained through a pipe into a sewer vested in the Metropolitan Board, it was held that they were not entitled to discharge

any sewer vested in such board or vestry, or authorised to be made by them or either of them under the firstly recited Act or this Act, such drain being of such size, materials (*k*), and other conditions, and branched into such sewer in such manner and form of communication in all respects, as the board or vestry shall direct or appoint: provided also, that where any contribution to the cost of a sewer is payable in respect of drainage into the same, it shall not be lawful for any person to make or branch any drain into such sewer except in conformity with the directions of the board or vestry in whom the same shall be vested with respect to payment of contribution under the provisions contained in the firstly recited Act and this Act in that behalf (*l*); and in case any person, without the consent of the said *Metropolitan Board* (*m*), district board, or vestry as aforesaid, make or branch, or cause to be made or branched, any sewer or drain, or make any opening into any of the sewers vested in any such board or vestry, or authorised to be made by them as aforesaid, or if any person make or branch, or cause to be made or branched, any drain of a different construction, size, material, or other conditions, or in another manner or form of communication than shall be directed or appointed by such board or vestry, every person so offending shall for every such offence forfeit a sum not exceeding fifty pounds; and the board or vestry may cut off the connection between such drain and their sewer, or if they shall see fit execute the necessary works for making the said drain conformable to their regulations or directions at the expense of the person making such drain or causing the same to be made, such expenses to be recovered either by action at law or in a summary manner (*n*) before a justice of the peace, at the option of the board or vestry.

25 & 26 Vict. c. 102.

62. [*Underground rooms occupied as dwellings. Rep. and replaced by the Pub. Hlth. (London) Act*, 1891, *secs.* 96, 97, *and* 142, *post.*]

63. [*Recital of sec.* 76 *of Met. Man. Act*, 1855, *ante.*] Where any notice shall have been given to any vestry or district board pursuant to the said section, it shall be lawful for the surveyor of such vestry or board, if he shall deem it necessary and proper so to do, within three days after (*o*) the receipt of such notice by the vestry or district board, by writing under his hand directed to and served upon the person giving such notice, to require that the building or works referred to therein shall not be proceeded with until after the then next meeting of the said vestry or district board, and

Extension of time under sec. 76 of 18 & 19 Vict. c. 120 for making orders by vestries and district boards.

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additional sewage from other cottages through the pipe without the consent of the Board. *Met. Bd. Wks.* v. *London and North Western Ry. Co.*, 17 Ch. D. 246; 50 L. J. Ch. 409. A district board having approved the plans and sections of a proposed private sewer, to branch into a main sewer, and having obtained the sanction of the Met. Bd. Wks. thereto, were held not to be justified in withholding their consent to the construction of the private sewer until payment by the owner of the land of a sum of money to cover their expenses of supervision. *Reg.* v. *Greenwich Bd. Wks.*, 1 C. & E. 236.

Further provisions are made, and penalties imposed, respecting making sewers or drains, or branching them into main or local sewers, without the approval of the County Council, vestry, or district board, as the case may be, or contrary to plans approved by the County Council, by the Met. Man. Amend. Act, 1890 (53 & 54 Vict. c. 66), secs. 4 and 5, *post.* See also secs. 44—51 of the present Act, *ante.*

(*k*) **Materials.** See *Austin* v. *St. Mary, Lambeth*, *ante*, p. 141.

(*l*) **Provisions in that behalf**, i.e., sec. 80 of the Met. Man. Act, 1855, *ante*, and sec. 59 of the present Act, *ante.*

(*m*) **Met. Bd. Wks.** See note (*d*) on page 250.

(*n*) **Action . . . summary manner.** See note to sec. 63, *post.*

(*o*) **Within . . . days after.** See note to sec. 211 of the Met. Man. Act, 1855, *ante.*

25 & 26 Vict. c. 102.

until their directions in reference thereto shall have been notified to such person, provided that the order of the said vestry or district board shall be made and notified to the said person at the latest within fifteen days after (*p*) the receipt of such notice by the vestry or district board; and in case any person shall proceed with any building or works contrary to this enactment he shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum of forty shillings for every day during which such offence shall continue, to be recovered by action at law or in a summary manner (*q*) at the option of the vestry or board.

Where parties neglect to carry out works pursuant to order of vestry the vestry may recover penalty or do the works.

64. Whereas by the seventy-third, seventy-fourth, seventy-sixth, . . . (*r*), eighty-fifth . . . (*r*) sections of the firstly recited Act certain works, matters, and things are required to be constructed, made, or executed on the requisition of vestries and district boards by the owners or occupiers of the premises therein referred to; and in case any such owner or occupier refuse or neglect to commence, proceed with, or complete the same, as the case may be, the vestry or district board are authorised to perform and execute such works, matters, and things, and recover the costs incurred thereby in manner therein provided: be it enacted, that in case of any such neglect or default by any person or persons to comply with the order of any vestry or district board to execute any works, matters, or things under any of the said provisions, the person or persons so offending shall forfeit and pay to the vestry or district board a sum not exceeding five pounds, and also a further sum not exceeding forty shillings for every day during which such offence shall continue, to be recovered by action at law or before a justice of the peace in a summary manner (*q*), at the option of the vestry or district board; and the vestry or district board may at their discretion either execute or perform any such works, matters, or things, and recover the costs and expenses thereof from the owner of the property as aforesaid, or proceed for and recover the said penalty or penalties; but nothing herein contained shall render any person or persons liable to be proceeded against for the penalty as well as for the costs and expenses of the works.

Penalties in 18 & 19 Vict. c. 120 extended to persons causing offences.

65. The penalties declared by the firstly recited Act in the case of persons committing the offences mentioned therein are hereby extended and made applicable to all persons causing the commission of any such offences, or by whose order or direction any such offences shall have been committed.

Temporary provision for drainage of property where no proper sewer within 200 feet.

66. Whereas certain property within the limits of the Metropolis is so situate as to render it impracticable, or practicable only at undue expense,

(*p*) **Within . . . days after.** See note (*o*) on page 251.

(*q*) **Action . . . summary manner.** As to summary proceedings, and the time within which they must be commenced, see secs. 102 and 104, *post*; and the Met. Man. Act, 1855, sec. 227 and notes thereto, *ante*. Where under the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), and the repealed Loc. Govt. Act, 1858, Amend. Act, 1861 (24 & 25 Vict. c. 61), local authorities had the option of recovering certain demands either in a summary manner or in the county court, it was held that the six months' limit within which proceedings must be taken under sec. 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), applied equally to proceedings taken in the county court. *Tottenham Loc. Bd.* v. *Rowell*, 1 Ex. D. 514; 46 L. J. Q. B. 432; followed in *Hammersmith Vestry* v. *Lowenfeld*, *post*, p. 287.

(*r*) **Section 64.** The omitted words are repealed by the Pub. Hlth. (London) Act, 1891, sec. 142, *post*.

to connect such property with covered sewers, and it is expedient that some temporary provision should be made for draining such property and abating the nuisances existing thereon or caused thereby: be it therefore enacted, that in any case in which any house or other building, whether erected before or after the passing of this Act, is without sufficient drainage, and there is no proper sewer within two hundred feet (*s*) of any part of such house or building, it shall be lawful for the vestry or district board of the parish or district in which such house or building is situate by notice in writing to require the owner (*t*) of such house or building to construct and lay from such house or building a covered drain to lead therefrom into a covered water-tight cesspool or tank or other suitable receptacle, not being under a house or within such distance from a house (*u*) as the vestry or board shall direct, and to construct such cesspool, tank, or receptacle; and the several provisions in the firstly recited Act with respect to the laying of house drains at the expense of the owners of property, and the recovery of such expenses of and the penalties for any omission in respect to the performance of any such works pursuant to the orders of vestries or district boards in accordance with the directions of the said Act (*x*), shall be extended to and apply to the making of such cesspools, tanks, receptacles, and drains, and the orders of vestries and district boards in relation thereto and the expenses thereof. 25 & 26 Vict. c. 102.

67. [*Supply of water for houses. Rep. and replaced by the Pub. Hlth. (London) Act*, 1891, *secs.* 48 *and* 142, *post.*]

68. Every person who shall knowingly erect or place any building, wall, bridge, fence, obstruction, annoyance, or encroachment in, upon, over, or under any sewer (*y*) under the jurisdiction of the *Metropolitan Board of Works* (*z*), or of any vestry or district board, and every person obstructing, filling in, or diverting any sewer or drain under the jurisdiction, survey, or control of the *Metropolitan Board* (*z*) or of any vestry or district board, without the previous consent in writing of the board or vestry in whom the same may be vested, shall, in addition to any other proceeding to which he may be liable therefor, forfeit and pay to such respective board or vestry a sum not exceeding twenty pounds for every such offence; and the board or vestry may demolish and remove any such building, wall, bridge, fence, obstruction, annoyance, or encroachment, and perform any works necessary for restoring or reinstating the sewer or other work or thing damaged; and the party erecting such building, wall, bridge, fence, or causing such obstruction, annoyance, or encroachment, shall also pay the expense of removing and abating them respectively, Penalty on persons placing buildings or encroachments on sewers.

(*s*) **No sewer within two hundred feet.** See *Bathard* v. *City of London Commissioners of Sewers*, cited in note (*t*) to sec. 73 of the Met. Man. Act, 1855, *ante*, p. 138. It is unlawful to erect or rebuild any house or building without satisfactory drains leading to a sewer, or if there be no sewer within *one hundred feet*, then to such covered cesspool or other place as the vestry or district board shall direct. *Ib.*, sec. 75.

(*t*) **Owner** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

(*u*) **House.** See note (*r*) to sec. 73 of the Met. Man. Act, 1855, *ante*.

(*x*) **Provisions in firstly recited Act**, i.e., the Met. Man. Act, 1855, secs. 73, 74, 76, 78, 79, 83, 84, and 85, *ante*. See also sec. 64 of the present Act, *ante*.

(*y*) **Encroachments on sewers.** Sewer is defined by sec. 250 of the Met. Man. Act, 1855, *ante*. For other provisions for the protection of sewers, see Met. Man. Act, 1855, secs. 83, 204, 205, and 206, *ante*; and the London Coun. Counc. (Genl. Powers) Act, 1894, secs. 8—17, and note thereto, *post*, p. 526.

(*z*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

25 & 26 Vict. c. 102.

and of re-opening, restoring, repairing, or reinstating any sewer or drain obstructed, filled in, closed up, or diverted; and in case of a continuing offence in any of the cases aforesaid the offender shall be liable to a further penalty, not exceeding five pounds, for each day after notice thereof from the *Metropolitan Board of Works* (*a*), or from the vestry or district board, to be recovered by action at law or before any justice of the peace, by a summary proceeding (*b*), at the option of the board or vestry: provided always, that nothing herein contained shall extend to prevent or impede the maintenance, repair or renewal of any buildings or works under which a sewer or drain has been constructed, but so, nevertheless, that such buildings or works shall not injure or obstruct the said sewer or drain.

Penalty on persons interfering with sewers.

69. Any person who shall take up, remove, demolish, or otherwise interfere with any sewer or part of a sewer (*c*), vested in the *Metropolitan Board of Works* (*a*), or in any vestry or district board, without the previous permission in writing of such board or vestry, or who shall wilfully damage any sewer, bank, defence, wall, penstock, grating, gully, side entrance, tide valve, flap, work, or thing vested in the *Metropolitan Board* (*a*), or any vestry or district board, or do any act by which the drainage of the Metropolis or any part thereof may be obstructed or injured, shall for every such offence forfeit and pay to the said *Metropolitan Board of Works* (*a*), or to the vestry or district board aggrieved by any such act, for every such offence a sum not exceeding twenty pounds, and shall also pay to such board or vestry all the expenses of repairing, restoring, reinstating, or amending any sewer or other work or thing so taken up, removed, demolished, damaged, or interfered with, to be recovered by action at law or before a justice of the peace by a summary proceeding (*b*), at the option of the board or vestry.

70. [*Drinking fountains. Rep. and replaced by Pub. Hlth.* (*London*) *Act*, 1891, *secs.* 51 *and* 142, *post.*]

Income of estates, property, &c., subject to trusts for repair of highways, to be paid over to vestry or district board.

71. All property, rights, matters, and things whatsoever which before the passing of the firstly recited Act were vested in any surveyor or surveyors of highways in connexion with their duties and powers as such surveyor or surveyors, transferred by that Act to any vestry or district board (*d*), shall be deemed to have become transferred to and to have vested in such vestry or district board by virtue of the said Act; and so much of the yearly and other income of all estates, property, and effects of whatsoever description so vested and transferred as aforesaid as is or may be subject to any use or trust for or in respect of and applicable to the repair of any highways within the Metropolis shall be applicable to the repair, maintenance, and improvement of the highways within the Metropolis under the provisions of the said Act, and shall from time to time be accounted for and paid over to the respective vestries and district boards, and be applied by them for the purposes of the highways within their parishes and districts, in the same manner as the same could lawfully have been applied before the passing of the said Act.

(*a*) **Met. Bd. Wks.** See note (*c*) on page 255.
(*b*) **Action . . . summary proceeding.** See note to sec. 63, *ante*.
(*c*) **Encroachments on sewers.** See note (*y*) on page 253.
(*d*) **Property of surveyors.** Sec. 96 of the Met. Man. Act, 1855, *ante*, p. 147, transferred to the vestries and district boards the powers, duties, and liabilities of surveyors of highways, and the streets, &c. vested in them.

25 & 26 Vict. c. 102.

Vestries and district boards may, with consent of County Council, effect improvements within their parish or district.

72. The vestry of every parish mentioned in schedule A. to the firstly recited Act, and the district board of every district, shall, with the previous consent in writing of the *Metropolitan Board of Works* (*e*), have power within their respective parish or district to make, extend, widen, alter, or improve any street, road, or way, or any bridge over a canal (*f*), traversing any part of such parish or district, for the purpose of facilitating passage and traffic, or for any other public purpose; or to contribute and join with the *Metropolitan Board* (*e*), or with any other body or persons, in any such improvements; and to take by agreement or gift any land, right in land, or property for the purposes aforesaid, or any of them, on such terms and conditions as they may think fit; and for the purposes aforesaid it shall be lawful for any vestry or district board, should they see fit, to take down the present bridges over canals within their parish or district, and to erect others in their place and stead, or to erect new bridges over such canals in such situations as they may deem beneficial, and from time to time to repair and maintain such existing or new bridges, and to indemnify the canal company or other body or persons interested in such bridges against the future repairs and maintenance of any such bridges; and the expenses incurred by any vestry or district board in any such improvements shall be paid out of the general rate authorised to be raised in their parish or district under the firstly recited Act: provided that no such extension, widening, alteration, improvement, taking down, or re-erection of any existing bridge over any such canal, or the erection of any new bridge over the same, shall be made without the previous consent in writing under their common seal of the company owning such canal, and the provisions of the one hundred and seventh section of the firstly recited Act shall remain in force and be applicable to this enactment: provided also, that it shall be lawful for any such vestry or district board, under the provision contained in the one hundred and eighty-third section of the firstly recited Act, to borrow and take up at interest on the credit of all or any of the moneys or rates authorised to be raised by them under that Act any sums necessary for defraying the expenses of any such improvements: provided, that nothing in this Act shall extend or be construed to extend to authorise the taking down or removing any bar, gate, rail, or other fence fixed for preventing any thoroughfare into or from any square, street, or way (*g*), without the consent of the proprietor of the estate or property upon which such bar, gate, rail, or other fence, square, street, or way shall be situate: provided that this enactment shall not limit the powers in force given by the Act next hereinafter referred to, or by any local Act.

Act as to paving and improving parts of Metropolis to extend to Metropolis as defined by this Act.

73. The powers of improving and regulating streets and for the suppression of nuisances contained in the Act of the fifty-seventh year of the reign of His Majesty King George the Third, chapter twenty-nine, local and personal, intituled "An Act for better paving, improving, and regulating the streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein" (*h*), shall so far as the same is in

(*e*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*f*) **Canal.** As to works affecting canals, see secs. 34 and 35, *ante*.

(*g*) **Bar, gate, &c.** See sec. 107 of the Met. Man. Act, 1855, and note thereto, *ante*.

(*h*) **57 Geo. 3, ch. xxix.**, i.e., the Metropolitan Paving Act, 1817, commonly called Michael Angelo Taylor's Act, *post*, p. 491.

25 & 26 Vict. c. 102.

force, and is not inconsistent with the provisions of the recited Acts and this Act, extend and apply to the Metropolis as defined in the firstly recited Act and in this Act, including any unpaved streets, and notwithstanding any exceptions therein contained.

74—76. [*Buildings beyond general line. Rep. and replaced by London Building Act*, 1894, *secs.* 9, 11, 22, 23, 190, 200 (10), *and* 215, *post.*]

Expenses of paving new streets.

77. Where any vestry or district board shall, under the powers given by the one hundred and fifth section of the firstly recited Act, have paved or be about to pave (*i*) any new street (*k*), the owners (*l*) of the land bounding or abutting on such street (*m*) shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein (*n*), provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient so to do; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all other incidental costs and charges (*o*), shall be apportioned by the vestry or board (*p*), and shall be recover-

(*i*) **Pave** is defined by sec. 112, *post*. As to flagging footways, see the Met. Man. Act, 1862, Amend. Act, 1890 (53 & 54 Vict. c. 54), *post*.

(*k*) **New street** is defined by sec. 112, *post*.

(*l*) **Owner** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

(*m*) **Land bounding or abutting on street.** A railway cutting, separated from a new street by a wall through which there was no communication, was held to be land bounding a street within the meaning of this section. *London and North-Western Rly. Co.* v. *St. Pancras Vestry*, 17 L. T. (N. S.) 654. Where a railway crossed a street on an arch, and on one side was carried forward on arches, and on that side there was a strip of land left open for the purpose of repairing the arches, and on the other side the railway was carried forward on a sloping embankment at the foot of which there was a strip of land abutting on the street, it was held that both the strips of land and the slope of the embankment were "land bounding or abutting" on a street within the section. *Higgins* v. *Harding*, L. R. 8 Q. B. 7; 42 L. J. M. C. 31. Where a railway runs through a cutting spanned by a bridge carrying a highway, the supports of the bridge having their foundation on the railway company's property, neither the railway below or adjacent to the bridge nor the parapets are "land bounding or abutting" on a street within this section. *London, Brighton, and South Coast Rly. Co.* v. *St. Giles, Camberwell*, 4 Ex. D. 239; 48 L. J. M. C. 184. *Gt. Eastern Rly. Co.* v. *Hackney Dist. Bd.*, 8 App. Cas. 687; 52 L. J. M. C. 105. Where a house, with its front and entrance in one street, had a garden at the back separated by a wall from a "new street," the garden was held to be land abutting on such "new street." *Paddington Vestry* v. *Bramwell*, 44 J. P. 815. The words "land bounding or abutting" include the soil of private roads leading out of a new street, and the owners of such private roads are liable to contribute to the expenses of paving such street. *Pound and Lord Northbrook* v. *Plumstead Dist. Bd.*, 7 Q. B. 183; 41 L. J. M. C. 51. The words used in sec. 69 of the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), and in sec. 150 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), are "fronting, adjoining, and abutting." For decisions thereon, see *Reg.* v. *Newport Loc. Bd.*, 3 B. & S. 341; 32 L. J. M. C. 97; *Wakefield Loc. Bd.* v. *Lee*, 1 Ex. D. 336; 35 L. T. (N. S.) 481; *Newport Urban Sanitary Authority* v. *Graham*, 9 Q. B. D. 183; 47 L. T. (N. S.) 98; *Lightbound* v. *Bebington Loc. Bd.*, 16 Q. B. D. 577; 55 L. J. M. C. 94. For cases under similar provisions of local Acts, see *Baddeley* v. *Gingell*, 1 Ex. Rep. 63; *Manchester (Mayor, &c. of)* v. *Chapman*, 37 L. J. M. C. 173; 18 L. T. (N. S.) 640; *Plumstead Dist. Bd.* v. *British Land Co.*, L. R. 10 Q. B. 203; 44 L. J. Q. B. 38.

(*n*) **Houses therein.** See note (*o*) to sec. 105 of the Met. Man. Act, 1855; and as to what is a house, see note (*r*) to sec. 73 of the same Act, *ante*.

(*o*) **Incidental costs.** The costs of serving notices of apportionment, obtaining names of owners, &c., though third persons be employed for that purpose, may be recovered as expenses incidental to the cost of paving. *Poplar Dist. Bd.* v. *Love*, 38 J. P. 246; 29 L. T. (N. S.) 915. See also *Walthamstow Loc. Bd.* v. *Staines* (1891), 2 Ch. 606; 60 L. J. Ch. 738.

(*p*) **Apportionment.** The principle on which the expenses of paving a new street are apportioned is in the absolute discretion of the vestry or district board, and, so long as they act *bonâ fide*, neither the magistrate nor the court has jurisdiction to interfere,

able (*q*) either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board at their discretion to accept payment of the amount apportioned or charged in respect of each house or premises by instalments (*r*) spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner (*s*) of the premises either by action at law or in a summary manner (*t*) before a justice of the peace, at the option of the vestry or board. 25 & 26 Vict. c. 102.

78. [*Flagging footways. Rep. and replaced by Met. Man. Act*, 1862, *Amend. Act*, 1890 (53 & 54 *Vict. c.* 54), *post.*]

79. [*Recital of the determination, on the coming into operation of the Met. Man. Act*, 1855, *of the powers of the commissioners under* 39 & 40 *Geo.* 3, *ch. xlix.* (*local*) *to pave roads and footways on the Bedford Estate.*] Sums to be paid by the Duke of Bedford to parties making up

even though one piece of land abutting on the street be assessed at a higher rate than another. *Metropolitan Dist. Ry. Co.* v. *Fulham Vestry* (1895), 2 Q. B. 443; 65 L. J. Q. B. 29; and see cases there cited. Where it is decided to pave the whole of a street at the expense of the owners, the street cannot be divided into sections, and the cost of repairing each section apportioned amongst the owners in each section respectively, but there must be one apportionment on all the owners along the entire street. *Whitchurch* v. *Fulham Dist. Bd.*, L. R. 1 Q. B. 233; 35 L. J. M. C. 145. But where it is decided to pave a section only of a street, the cost is to be apportioned only on the owners (on both sides) abutting on that section. *Ib.*; *Paddington Vestry* v. *North Metropolitan Ry. and Canal Co.* (1894), 1 Q. B. 633; 63 L. J. Q. B. 316. The owners on both sides of the street are chargeable, though the footway on one side only be paved or flagged. *Mile End Vestry* v. *Whitechapel Guardians*, 1 Q. B. D. 681; 46 L. J. M. C. 138; *Paddington Vestry* v. *North Metropolitan, &c., Co., supra.* Where the cost of paving a "new street" was apportioned amongst the owners, and some years afterwards a strip of land was added to one side, it was held that the owners of the land abutting on the side of the street to which the strip of land had been added were liable to pay the cost of paving such strip, but not the owners on the other side of the street. *White* v. *Fulham Vestry*, 60 J. P. 327; 74 L. T. (N. S.) 425. Where a surveyor under the repealed Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), made an apportionment which was a nullity, it was held that a fresh apportionment was valid. *Cook* v. *Ipswich Loc. Bd.*, L. R. 6 Q. B. 451; 44 L. J. M. C. 169.

(*q*) **Recovery of expenses.** On proceedings to recover expenses under this section, the magistrate is bound to admit evidence in order to ascertain whether the whole of the expenses claimed have been incurred in respect of paving work (*Reg.* v. *Marsham* (1892), 1 Q. B. 371; 61 L. J. M. C. 52); but he cannot go into the question of the necessity or expediency of the work, that matter being in the discretion of the vestry or district board. *Stroud* v. *Wandsworth Dist. Bd.* (1894), 1 Q. B. 4; 63 L. J. M. C. 88. If a mistake is made in the first proceedings with regard to the amount, the balance may be recovered in subsequent proceedings. *St. Mary, Islington* v. *Goodman*, 58 J. P. 703. As to repayment of the difference where the estimated expenses exceed the actual cost, see sec. 105 of the Met. Man. Act, 1855, *ante.*

(*r*) **Instalments.** Where a vestry or district board has agreed to accept payment by instalments, summary proceedings can be taken to recover any instalment, provided the information is laid within six calendar months of the demand therefor, notwithstanding that a previous application for the whole sum apportioned may have been made more than six months before such information was laid. *Prescott* v. *Nicholson*, 60 L. T. (N. S.) 563; 53 J. P. 597.

(*s*) **Future owner.** Or present or future occupier. Sec. 96, *post.* The whole amount apportioned may be recovered from future owners, whether payable by instalments or not. *Plumstead Dist. Bd.* v. *Ingoldby*, L. R. 8 Ex. 63; 42 L. J. Ex. 50. An unsatisfied judgment against one owner is not a bar to a subsequent action for the same expenses against a person occupying as tenant to a succeeding owner. *Bermondsey Vestry* v. *Ramsey*, L. R. 6 C. P. 247; 40 L. J. C. P. 206. Where a former owner has neglected to pay, the Statute of Limitations does not apply to a demand made on a subsequent owner. *Wortley* v. *St. Mary, Islington*, 51 J. P. 166. The apportionment of paving expenses imposes a personal liability on the owners for the time being of the premises for which they are assessed, and such expenses are not a charge upon the land within the covenant against incumbrances contained in the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), sec. 7 (1) (a). *Egg* v. *Blayney*, 21 Q. B. D. 107; 57 L. J. Q. B. 460.

(*t*) **Action . . . summary manner.** See note to sec. 63, *ante.*

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roads and footways on Bedford estate in the parish of St. Pancras, to be added to debt on that part of the parish.

Upon the completion of the said roads and footways to the satisfaction of the said vestry and the production to them of the receipts in writing of the said parties respectively for the said sums from his Grace the Duke of Bedford or his agent, such sums shall respectively become debts to the said duke, and be added to and form part of the debt which at the time of the coming into operation of the firstly recited Act was legally charged upon the said rates or assessments, and shall carry interest at the rate of four pounds per centum per annum, payable half-yearly on the first day of January and the first day of July in every year from the time of the receipt of such sums by the said parties or the completion of the said roads and footways as aforesaid, whichever shall last happen; and section one hundred and eighty of the firstly-recited Act shall be applicable accordingly in respect of such sums and the interest thereof in like manner as in respect of such debt as last aforesaid.

Notice of intention to repair street, not being a highway.

80. [*Repeal of proviso to sec.* 106 *of the Met. Man. Act*, 1855, *ante.*] No street not being an highway (*u*) shall be repaired as in the said section mentioned, unless notice be given to the owners and rated occupiers of the houses in such street respectively; and service of any such notice may be effected by leaving the same at the several houses in such street, or where any of the said houses shall be unoccupied, by affixing the same upon the outer door or some conspicuous part of such houses; and provided further, that no such street shall be repaired as in the said section mentioned if within one month after notice has been given as aforesaid written notice of objection to such repair, signed by at least two-thirds of the owners or rated occupiers of houses in the said street, shall be given to the vestry or district board.

Where owners of courts, &c., omit to drain and pave, vestry or district board may perform the works, charging expenses to owner.

81. In any case of default by the owner (*x*) of any court, passage, or public place, not being a thoroughfare, to comply with the requisition of any vestry or district board to perform works of paving or draining of the nature described in the one hundredth section of the firstly-recited Act, it shall be lawful for the vestry or board, should they see fit, in lieu of enforcing the penalty therein mentioned to execute and perform such works, and recover the expenses thereof from the owner either by action at law or in a summary manner (*y*) before a justice, at the option of the vestry or board.

Reinstatement of pavement broken up by works of companies, &c.

82. In every case in which any company or person shall be liable under the firstly-recited Act to reinstate the pavement, surface, or soil of any street (*z*) under the control of any vestry or district board which may have been broken up or opened, or to repay to such vestry or board the expenses of reinstating the pavement, surface, or soil of any street, every such company or person shall be liable to reinstate the pavement, surface, or soil, or to pay the expenses of reinstating the pavement, surface, or soil of such parts of the street as shall have been so broken up or opened, as well as of the part or parts contiguous thereto which may be affected by the works of such company or person, to the reasonable satisfaction of the surveyor for the time being of the vestry or district having control over the pavements in such parish or district.

(*u*) **Street . . . highway.** Street is defined by sec. 250 of the Met. Man. Act, 1855, *ante*. As to what is a highway, see note (*y*) to sec. 96 of Act, *ante*.

(*x*) **Owner** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

(*y*) **Action . . summary manner.** See note to sec. 63, *ante*.

(*z*) **Reinstatement of street.** See Met. Man. Act, 1855, secs. 109—115, *ante*.

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83. The *Metropolitan Board of Works* (*a*) may, in order to secure the efficient maintenance of the main and general sewerage of the Metropolis, from time to time make, alter, and repeal byelaws for the guidance, direction, and control of the vestries of parishes in schedule A. to the firstly-recited Act, district boards, and all other persons, in relation to the levels, dimensions, construction, maintenance, ventilation, and cleansing of sewers (*b*) in their respective parishes, districts, or parts, and for the other objects enumerated in the one hundred and thirty-eighth section of the firstly recited Act, subject in all respects to the several provisions relating to byelaws contained in the two hundred and second section of the said Act; but this provision shall only extend to the City of London and the liberties thereof, so far as regards the main drainage of the Metropolis.

County Council may make bye-laws for guidance of vestries, &c., in construction of sewers.

84. It shall be lawful for any vestry or district board, with the previous sanction of the *Metropolitan Board of Works* (*a*) to close or stop up any street (*c*) within their parish or district during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as shall be necessary in that behalf, and allowed by the *Metropolitan Board* (*a*).

Vestries, &c., may stop up streets during execution of works.

85. [*Height of buildings. Rep. and replaced by London Building Act*, 1894, *secs.* 47 *and* 215, *post.*]

86. Where in any street the roadway and footpaths or either of them are or is situate in more than one parish or district, or where the whole of the roadway and footpaths of any street are situate in one parish or district, and the whole or any part of the houses and buildings abutting on such roadway or footpaths are situate in another parish or district, in either of the said cases it shall be lawful for the *Metropolitan Board of Works* (*a*) should they deem it convenient and proper so to do, to order that any such roadway and footpaths shall, for the purposes of sewerage, drainage, paving, and lighting, or any of them, be under the exclusive management of the vestry or district board of one of the said parishes or districts and to order and direct in what proportions the costs of constructing and maintaining any new sewer or drain in such street, or of the reconstruction, reparation, or maintenance of any existing sewer or drain therein, or of the paving or making up or lighting of the roadway or footpaths thereof, and the repair and maintenance of such roadway or footpaths, shall be borne and defrayed by the vestry or board of each parish or district (*d*), and the decision of the said *Metropolitan Board* (*a*) thereon shall be final and conclusive; and in case of default by any vestry or board liable under any such order to any

County Council may place road, way, footpaths, &c., in different parishes or districts under management of one vestry or district board.

(*a*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*b*) **Byelaws** relating to the construction of sewers, made by the Met. Bd. Wks. under this section, were still in force at the date of publication of this work.

(*c*) **Stop up streets.** Sec. 52 of the Metropolitan Paving Act, 1817, *post*, p. 502, also gives power to stop up streets during repair.

(*d*) **Streets in more than one parish.** See also the Met. Man. Act, 1855, secs. 140 and 160, *ante*. Where the Met. Bd. Wks. ordered that a new street, partly within a parish and partly within a district, should be under the exclusive management of the vestry of the parish, and that the expenses should be borne in equal proportions by the vestry and the district board, it was held that the vestry was not entitled to require the district board to pay one-half of the expenses of paving the street as a new street, which were properly chargeable on the frontagers under sec. 77, *ante*, and sec. 105 of the Met. Man. Act, 1855, *ante*. *St. Giles, Camberwell* v. *Greenwich Dist. Bd.*, 19 Q. B. D. 502; 56 L. J. Q. B. 636.

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such payment, the vestry or district board entitled thereto may sue for and recover the amount thereof from the vestry or board so making default by action at law.

87. [*Names of streets. Rep. and replaced by London Building Act*, 1894, *secs.* 32—36, *and* 215, *post.*]

Persons omitting to give notice required by sec. 76 of 18 & 19 Vict. c. 120, liable to penalty.

88. If any person shall, without having given the notice directed by the seventy-sixth section of the firstly-recited Act, begin to lay the foundation of any new house or building within any parish mentioned in schedule A. of the said Act, or any district in schedule B. of the said Act, or to make any drain for the purpose of draining either directly or indirectly into any sewer under the jurisdiction of the vestry or board of such parish or district, he shall become liable to a penalty for every such offence not exceeding five pounds, and to a continuing penalty of forty shillings for each and every day during which he shall omit to give the notice directed by the said Act.

89. [*Wrongful collection of ashes. Rep. and replaced by Pub. Hlth.* (*London*) *Act*, 1891, *secs.* 34 (2) *and* 142, *post.*]

Penalties for affixing bills on lamp posts, notice boards, &c.

90. Every person who shall affix or cause to be affixed any bill, notice, or paper against, or deface or disfigure any street post, lamp post, pump, or building vested in any board or vestry, or who shall remove, deface, or injure any notice board placed or set up by order of any board or vestry, or who shall pull down, obliterate, or deface any notice set up or affixed by order of any board or vestry shall for every such offence forfeit a sum not exceeding forty shillings, to be recovered before a justice by a summary proceeding (*e*).

91. [*Keeping swine. Rep. and replaced by Pub. Hlth.* (*London*) *Act*, 1891, *secs.* 17, 18, *and* 142, *post.*]

92. *Repeal of sec.* 131 *of Met. Man. Act*, 1855, *ante, and sec.* 35 *of Metropolitan Market Act*, 1857 (20 & 21 *Vict. ch. cxxxv.*). *Rep. by* 38 & 39 *Vict. c.* 66 (*Statute Law Revision*).]

93—95. [*Licensing cowhouses. Removal of manure. Rep. and replaced by Pub. Hlth.* (*London*) *Act*, 1891, *secs.* 20, 36, *and* 142, *post.*]

Vestry or district board may require payment of costs or expenses from owner or occupier, and occupier paying to deduct from rent.

96. [*Repeal of secs.* 217, 218, *and* 219 *of Met. Man. Act*, 1855, *ante.*] It shall be lawful for any vestry or district board, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under the said recited Act or this Act either from the owner (*f*) or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same (*g*), and the same shall be recovered in manner authorised by the recited Act and this Act; and the owner shall allow such occupier to deduct the sums of money which he so pays (*h*) out of the rent from time to time becoming due in respect of

(*e*) **Summary proceeding.** See sec. 102, *post.*

(*f*) **Owner** is defined by the Met. Man. Act, 1855, sec. 250, *ante.*

(*g*) **Liability of occupier.** An unsatisfied judgment against a former owner is no bar to a subsequent action for the same expenses against a person occupying as tenant to a succeeding owner. *Bermondsey Vestry* v. *Ramsey*, L. R. 6 C. P. 247; 40 L. J. C. P. 206. And see note (*s*) to sec. 77, *ante.*

(*h*) **Deduction by occupier.** To entitle the occupier to avail himself of this provision the money must have been actually paid; and therefore a distress for rent which became due after service of notice from the vestry, but before payment to the vestry clerk, was held not to be illegal. *Ryan* v. *Thompson*, L. R. 3 C. P. 144; 37 L. J. C. P. 134.

the said premises as if the same had been actually paid to such owner as part of such rent: provided always, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the vestry or district board, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner and occupier of any house, building, or other property, whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant (*i*).

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Agreements between landlord and tenant not to be affected.

97. If the owner (*k*) or landlord of any premises from whose rent any amount shall be deducted in respect of any costs, charges, or expenses payable under the firstly recited Act or this Act shall hold the premises in

Deduction by owners paying rent where amount of expenses deducted from rent paid to him.

(*i*) **Contract between landlord and tenant.** A covenant by a lessee to pay all such "parliamentary, parochial, and county district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burdens, duties, and services whatever," was held to include the expenses of constructing a drain recovered from him by a district board. *Sweet* v. *Seager*, 2 C. B. (N. S.) 119; 21 J. P. 406. Where a lessee covenanted to pay all "taxes, rates, duties, and assessments whatsoever," which should be "taxed, assessed, or imposed on the tenant or landlord," it was held that paving expenses incurred under sec. 105 of the Man. Act, 1855, were a "duty" or "assessment" assessed or imposed upon the owner within the covenant. *Thompson* v. *Lapworth*, L. R. 3 C. P. 149; 37 L. J. C. P. 74. The expenses of paving a new street were held not to be a rate payable by the tenant under a covenant by him to pay all "rates and assessments taxed, rated, charged, assessed or imposed upon the demised premises, or upon or payable by the occupier or tenant in respect thereof." *Allum* v. *Dickinson*, 9 Q. B. D. 632; 52 L. J. Q. B. 190. See also the similar case of *Hill* v. *Edward*, W. N. 1885, p. 32. A covenant to pay "all rates, taxes, and assessments" does not include the expenses of paving a street. *Wilkinson* v. *Collyer*, 13 Q. B. D. 1; 53 L. J. Q. B. 278. The owner's proportion of the cost of paving a street is an "outgoing" payable by the lessee under a covenant to pay "all existing and future taxes, rates, assessments . . . and outgoings of every description, for the time being payable either by the landlord or tenant. *Aldridge* v. *Ferne*, 17 Q. B. D. 212; 55 L. J. Q. B. 587. A covenant by a lessee to pay the rent "free and clear from all deductions for main drainage and sewers rates, metropolitan and local improvement rates, taxes" . . . and to "pay and discharge" such rates and taxes, was held not to exclude the lessee's right to deduct the cost of a new drain constructed by the vestry and recovered from him. *Home and Colonial Stores* v. *Tod*, 63 L. T. (N. S.) 829. And see *In re Crawley*, *Acton* v. *Crawley*, 28 Ch. D. 431; 54 L. J. Ch. 652. See also the similar provision of sec. 121 (b) of the Pub. Hlth. (London) Act, 1891, and cases cited in note thereto, *post*.

For decisions under other Acts, see *Payne* v. *Burridge*, 12 M. & W. 727; 13 L. J. Ex. 190; *Rawlins* v. *Briggs*, 3 C. P. D. 368; 47 L. J. Ch. 487; and cases there cited. *Gardner* v. *Furness Rly. Co.*, 47 J. P. 232; *Hartley* v. *Hudson*, 4 C. P. D. 367; 48 L. J. C. P. 701; *Budd* v. *Marshall*, 5 C. P. D. 481; 50 L. J. C. P. 21; *Midgley* v. *Coppock*, 4 Ex. D. 309; 48 L. J. Ex. 674; *Batchelor* v. *Bigger*, 60 L. T. (N. S.) 416; W. N. 1889, p. 51; *Lyon* v. *Greenhow*, 8 T. L. R. 457; *In re Barney*, *Harrison* v. *Barney* (1894), 3 Ch. 562; 63 L. J. Ch. 676.

As to the principles applicable to the construction of repairing covenants, see *Miller* v. *Hancock* (1893), 2 Q. B. 177; 57 J. P. 758; and *Lister* v. *Lane* (1893), 2 Q. B. 212; 62 L. J. Q. B. 583, and cases there cited.

(*k*) **Owner.** See note (*f*) on page 260.

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respect of which the amount of such costs, charges, or expenses shall be paid at a rent not less than the rack-rent (*l*), he shall be entitled to deduct the whole amount paid by him on account of such costs, charges, or expenses from the rent payable by him to his superior landlord; and if he holds at a rent less than the rack-rent, he shall be entitled to deduct from the rent so payable by him a sum bearing the same proportion to the amount so paid by him on account of such costs, charges, or expenses as his rent shall bear to the rack-rent; and if the owner or landlord from whose rent any deduction be made under the provision last aforesaid be himself liable to the payment of rent for the premises in respect of which the deduction shall be made, and hold such premises for a term of which less than twenty-one years shall be unexpired, but not otherwise, he may deduct from the rent so payable by him a sum bearing the same proportion to the sum deducted from the rent payable to him as the rent payable by him shall bear to the rent payable to him, and so on in succession with respect to every landlord of the same premises both receiving and liable to pay rent in respect thereof, and holding the same for a term of which less than twenty-one years shall be unexpired as aforesaid: provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him: provided also, that nothing herein contained shall be taken to affect any contract made or to be made between any owner or occupier of any house, building, or other property whereof it is or may be agreed that the occupier shall pay and discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant (*m*).

98—99. [*Width of streets. Rep. and replaced by London Building Act*, 1894, *secs.* 9 *and* 215, *post.*]

Power to vestries, &c., to borrow moneys for the improvement of streets.

100. It shall be lawful for every vestry and district board mentioned in clause one hundred and eighty-three of the first-recited Act to exercise the power to borrow moneys therein mentioned, with the sanction of the *Metropolitan Board of Works* (*n*) granted under their common seal, for the purpose of enabling such vestry or district board to make, extend, widen, alter, or improve any street, road, or way, for facilitating the passage and traffic within the parish or district for which such vestry or district board is appointed, or for the purpose of contributing to and of joining with the *Metropolitan Board* (*n*) or with any other board or persons in any such improvement.

101. [*Inspectors of weights and measures. Rep. and replaced by the Weights and Measures Act*, 1878, *secs.* 55 *and* 86, *post, vol. ii.*]

Penalties may be recovered in manner provided by 11 & 12 Vict. c. 43.

102. Every penalty or forfeiture imposed by this Act, and made recoverable by a summary proceeding, may be recovered before any justice

(*l*) **Rack-rent** is "a rent of the full annual value of the tenement, or near it." H. Broom & Hd. Com. 54. See also the definition of rack-rent in the Pub. Hlth. (London) Act, 1891, sec. 141, *post*.

(*m*) **Contract between landlord and tenant.** See note (*i*) on page 261.

(*n*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

of the peace, in manner provided by the Summary Jurisdiction Act, 1848 (*o*). 25 & 26 Vict. c. 102.

103. [*Expenses of obtaining Act. Rep. by* 38 *&* 39 *Vict. c.* 66 (*Statute Law Revision*).]

104. The provision in the two hundred and twenty-seventh section of the firstly recited Act for the recovery of penalties and forfeitures imposed by the said Act is hereby extended to any damages, costs, or expenses payable or recoverable under the said recited Acts or this Act; and any such damages, costs, or expenses, the recovery whereof is not otherwise provided for, may be recovered by summary proceedings in manner directed by the said section. Provision as to penalties under sec. 227 of 18 & 19 Vict. c. 120, extended to damages, &c.

105. [*Repeal of sec.* 234 *of Met. Man. Act*, 1855, *ante.*] All penalties or forfeitures payable or recoverable under the firstly-recited Act or this Act (*p*), . . . shall go and be paid in manner hereinafter mentioned anything contained in the Metropolitan Police Courts Act, 1839 (*q*), or in any other Act or Acts to the contrary notwithstanding; that is to say, one-half shall go to the informer (*r*), and the remainder shall go to the vestry or district board of the parish or district in which the offence was committed, or to the *Metropolitan Board of Works* (*s*), in case the injury shall have been sustained by or the offence committed in respect of that Board; or if such vestry or district board or the *Metropolitan Board of Works* (*s*) be the informers, then the whole of the penalty recovered shall go to them respectively, and all sums which shall go to or be recovered by any board or vestry on account of any penalty or forfeiture shall be paid to their treasurer or into such bank to their account as they may direct, and shall be applicable towards the general expenses of such board or vestry; provided that in every case where any board or vestry are liable to any penalty or forfeiture, the whole of such penalty or forfeiture shall go to the informer. Application of penalties. 7 Will. 4 & 1 Vict. c. 83.

106. [*Notice of action, &c. Rep. and replaced by Public Authorities Protection Act*, 1893, *post, vol. ii.*]

107. [*Repeal of sec.* 233 *of Met. Man. Act*, 1855, *ante.*] No person shall be liable for the payment of any penalty or forfeiture (*t*) under the recited Acts or this Act, or any byelaw made by virtue thereof, for any offence made cognizable before a justice, unless the complaint respecting Penalties to be proceeded for within six months.

(*o*) **Summary Jurisdiction Act, 1848.** See notes to sec. 227 of the Met. Man. Act, 1855, *ante.*

(*p*) **Section 105.** The omitted words provided for the application of penalties under the repealed Nuisances Removal Act, 1855, and are repealed by the Pub. Hlth. (London) Act, 1891, sec. 142, *post.*

(*q*) **Metropolitan Police Courts Act, 1839.** See *Reg.* v. *Titterton*, *post*, vol. ii. p. 883.

(*r*) **Informer.** As a general rule, where the offence is not against an individual, but the matter is one of public policy, any person may lay the information, and sue for the penalty, in the absence of language to the contrary in the Act inflicting such penalty. *Cole* v. *Coulton*, 2 E. & E. 695; 29 L. J. M. C. 125; *Back* v. *Holmes*, 57 L. J. M. C. 37; 51 J. P. 693. But a corporation cannot sue for penalties as a common informer unless expressly authorised by statute. *St. Leonards, Shoreditch* (*Guardians of*) v. *Franklin*, 3 C. P. D. 377; 47 L. J. Q. B. 727.

(*s*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante.*

(*t*) **Penalty or forfeiture.** The limitation of six months in this section applies only to pecuniary penalties or forfeitures. *Bermondsey Vestry* v. *Johnson*, L. R. 8 C. P. 441; 42 L. J. M. C. 67.

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such offence have been made before such justice within six months next after (*u*) the commission or discovery of such offence.

108. [*Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

No further liability to attach to places named in schedule (C.) of 18 & 19 Vict. c. 120.

109. Nothing in this Act contained shall be held to make the several places named in schedule (C.) of the firstly-recited Act liable to any payment or assessment to which they would not have been liable if this Act had not been passed.

Acts to be construed as one Act.

110. The said recited Acts and this Act shall be construed together as one Act.

111. [*Rep. by* 56 *&* 57 *Vict. c.* 54 (*Statute Law Revision*).]

Interpretation of terms.

"Metropolis."

"Drain."

"Water company."

"Cattle."

"Street."

"New street."

112. In the construction of the recited Acts and this Act the term "Metropolis" shall be deemed to include the City of London and the parishes and places mentioned in the schedules A., B., and C. to the firstly-recited Act; the word "drain" shall be deemed to apply to and include the subject-matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any drain for draining a group or block of houses by a combined operation, laid or constructed before the first day of January one thousand eight hundred and fifty-six, pursuant to the order or direction or with the sanction or approval of the metropolitan commissioners of sewers (*x*); the expression "water company" shall mean and include any of the companies enumerated in the twenty-ninth section of the Act of the session of the fifteenth and sixteenth years of the reign of Queen Victoria, chapter eighty-four, for the making better provision respecting the supply of water to the Metropolis, and also any other company, board, or commission, association, person, or partnership, corporate or unincorporate, for the time being supplying the Metropolis or any part thereof with water for domestic use; the word "cattle" shall include sheep, lambs, and swine; the word "street" shall be deemed to apply to and include the subject-matters specified in the two hundred and fiftieth section of the firstly-recited Act, and also any mews and a part thereof; the expression "new street" (*y*) shall apply to and include all streets

(*u*) **Within six months next after**, i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3. In calculating this period, the day on which the offence is committed or discovered is excluded, but the day on which the complaint is made is included; e.g., where an offence is committed or discovered on May 30th, the last day for making a complaint is June 30th. *Radcliffe* v. *Bartholomew*; and *Robinson* v. *Waddington*, *ante*, p. 203. As to the period from which the six months are reckoned, see *Morant* v. *Taylor*, and the other cases cited in note (*s*) to sec. 227 of the Met. Man. Act, 1855, *ante*.

(*x*) **Metropolitan commissioners of sewers**, i.e., the commissioners created in 1848 under 11 & 12 Vict. c. 112. *Appleyard* v. *St. Mary, Lambeth*, *ante*, p. 213.

(*y*) **New street**. The definition of "new street" in the present section does not limit or restrict the expression "new street" in sec. 105 of the Met. Man. Act, 1855, which includes a new street in the ordinary and popular sense of the term. *St. Giles, Camberwell* v. *Crystal Palace Co.* (1892), 2 Q. B. 33; 61 L. J. Q. B. 802. *Davis* v. *Greenwich Dist. Bd.* (1895), 2 Q. B. 219; 64 L. J. M. C. 257. In a case decided under sec. 57 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 75), Lord Selborne said:—"In the natural and popular sense of the word 'street,' or the words 'new street,' I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous); and by 'new street' a place which before had not that character, but which by the construction of buildings on each side, or possibly on one side, has acquired it." *Robinson* v. *Barton-Eccles Loc. Bd.*, 8 App. Cas. at p. 801; 53 L. J. Ch. 227. An ancient highway repairable by the parish, and bounded by hedges and fields, becomes a "new street" on the erection of buildings along its sides. *Pound* v. *Plumstead Bd. Wks.*, L. R. 7 Q. B. 183; 41 L. J. M. C. 51; *St. Giles, Camberwell* v. *Crystal Palace Co.*, *supra*; *Davis* v. *Greenwich Dist. Bd.*, *supra*. But where the owner of some land abutting for a short

hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving and roadway whereof had not, previously to the passing of this Act, been taken into charge and assumed by the commissioners, trustees, surveyors, or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out; the word "pave" (*z*) shall apply to and include the formation of the roadway or footway of any street; the word "clerk" shall include any officer called or to be called "secretary;" the word "surveyor" shall include any officer called or to be called "engineer;" the word "print" shall apply to and include every mode of taking impressions, whether by letterpress, stereotype, lithography, or otherwise.

25 & 26 Vict. c. 102.

"Pave."

"Clerk."

"Surveyor."

113. [*Rep. by* 38 *&* 39 *Vict. c.* 66 (*Statute Law Revision*).]

114. [*Remuneration of auditor of accounts of Met. Bd. Wks. Superseded by Loc. Govt. Act*, 1888, *sec.* 71 (3), *and sched.* 2, *ante*.]

115. All duties, powers, and authorities under the local Act of the tenth year of George the Fourth, chapter sixty-eight, now remaining vested in the committee of management of the affairs of the parish of Saint Paul, Covent Garden, shall become vested in and be performed and

Certain powers under local Act, 10 Geo. 4, c. 68, respecting parish of Saint Paul, Covent Garden, transferred.

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distance on one side of a lane six feet wide, without any houses, built six cottages standing back fifteen feet from the lane, it was held that his doing so did not convert the lane into a "new street." *Williams* v. *Powning*, 48 L. T. (N. S.) 672; 47 J. P. 486. See also *Gozzett* v. *Maldon Urban Sanitary Authority* (1894), 1 Q. B. 327; 58 J. P. 229, where, upon similar facts, the Court gave the same decision. Where an alley or lane had been used for about fifty years in common by tenants of nine houses as an access to them, but there was no thoroughfare through it, the Court held that there was evidence to justify the magistrate in finding that it was a "new street." *Dodd* v. *St. Pancras Vestry*, 34 J. P. 517. The roadway over a bridge constructed by a railway and dedicated to the public was held to be a "new street. *North London Rly. Co.* v. *St. Mary, Islington*, 27 L. T. (N. S.) 672; 37 J. P. 341. So was a road, the footways on each side of which had been paved by the vestry, but the carriageway of which had never been dedicated to the public (*St. Mary, Islington* v. *Barrett*, L. R. 9 Q. B. 278; 43 L. J. M. C. 85); and a turnpike road on the expiration of the trust. *St. John's, Hampstead* v. *Cotton*, 12 App. Cas. 1; 55 L. J. Q. B. 213. A road bounded in 1855 by market gardens and an irregular line of houses, and with a good raised footpath on the south side, and bounded by market gardens and two cottages, with only an irregular footpath on the north side, and along the north side of which a continuous row of houses was subsequently built, was held to be a "new street." *Dryden* v. *Putney Overseers*, L. R. 1 Ex. D. 223; 34 L. T. (N. S.) 69. See also the similar case of *Holden* v. *St. Mary, Islington*, 2 T. L. R. 740. A road formed since 1862, with only three buildings upon it, which had been erected for more than twenty years, was held not to be a "new street" for the purposes of sec. 77, *ante*. *St. Mary, Battersea* v. *Palmer* (1897), 1 Q. B. 220; 66 L. J. Q. B. 77.

A road may be a "new street" for the purposes of sec. 77, *ante*, even though the vestry or district board may have previously done repairs to the footways of a slight or temporary nature. *Wilson* v. *St. Giles, Camberwell* (1892), 1 Q. B. 1; 61 L. J. M. C. 3; *Davis* v. *Greenwich Dist. Bd., supra*. But where the vestry did, and intended to do, paving of a permanent character, it was held that the work having been once done, the vestry could not throw the burden of a subsequent repaving on the adjoining owners. *St. Giles, Camberwell* v. *Hunt*, 56 L. J. M. C. 65; 51 J. P. 227. See also *Reg.* v. *Hackney Bd. Wks., ante*, p. 152; and the Met. Man. Am. Act, 1890, sec. 3, *post*.

Whether a street is a "new street," is a matter of fact for the magistrate to decide (*Reg.* v. *Dayman*, 26 L. J. M. C. 128; 22 J. P. 39; *Bowles* v. *St. Mary, Islington*, 39 J. P. 757); subject, however, to the question for the Court whether there is any evidence to support his finding. *Williams* v. *Powning, supra; Midland Rly. Co.* v. *Watton*, 17 Q. B. D. 30; 55 L. J. M. C. 99; *Holden* v. *St. Mary, Islington, supra; Ellis* v. *London Coun. Counc.*, 9 T. L. R. 53.

(*z*) **Pave.** In the construction of the Met. Man. Act, 1862, Amend. Act, 1890 (53 & 54 Vict. c. 54), *post*, which empowers vestries and district boards to flag certain footways at the expense of the adjoining owners, the term "paved" includes asphalted or other similar paved work. See also *St. John's, Hampstead* v. *Hoopel, ante*, p. 141.

25 & 26 Vict. c. 102.

exercised by the vestry of such parish, elected under the Act of the eighteenth and nineteenth years of Victoria, chapter one hundred and twenty.

Saving rights of the Crown and the Duchy of Lancaster.

116. It shall not be lawful for the *Metropolitan Board of Works* (*z*) or for any vestry or district board, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exerciseable by the Queen's most excellent Majesty in right of her Crown, or in right of the Duchy of Lancaster, without the consent in writing of the commissioners of woods, or one of them, on behalf of Her Majesty, first had and obtained for that purpose, which consent such commissioners are hereby respectively authorised to give, or without the consent in like manner of the chancellor of the said duchy; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's Majesty, in right of her Crown or in right of her Duchy of Lancaster: provided always, that nothing herein contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the *Metropolitan Board of Works* (*z*) relating to the main drainage (*a*) of the Metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed.

Saving rights of the Crown in respect of the Duchy of Cornwall.

117. It shall not be lawful for the *Metropolitan Board of Works* (*z*) or for any vestry or district board, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights, of whatsoever nature, belonging to or enjoyed or exerciseable by the Queen's most excellent Majesty in right of her Duchy of Cornwall, without the consent in writing of two or more of the principal officers of the duchy, which consent such principal officers of the duchy are hereby authorised to give; and nothing herein contained shall divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exerciseable by the Queen's Majesty, in respect of the said duchy: provided always, that nothing herein contained shall in any way lessen, alter, or in any manner prejudice or affect the rights, powers, and authorities of the *Metropolitan Board of Works* (*z*) relating to the main drainage (*a*) of the Metropolis, but such rights, powers, and authorities may be put in force as if this section had not been passed.

SCHEDULES to which this Act refers.

SCHEDULE A.

[*Repealed by* 56 & 57 *Vict. c.* 54 (*Statute Law Revision*).]

SCHEDULE B.

Sec. 3.

APPORTIONMENT OF DEBT ON LOAN FROM THE CLERGY MUTUAL ASSURANCE SOCIETY.

Parishes and Places.	Amount charged on each Parish or Part.
[*Here follow the list of parishes and places, and the sums apportioned.*]	

(*z*) **Metropolitan Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8) *ante*.

(*a*) **Main drainage.** See the Met. Man. Amend. Act, 1858, *ante*.

SCHEDULE C. 25 & 26 Vict. c. 102.

Form of Assessment.

Sec. 8.

RESOLVED, That this *Board* (*b*) do and they do hereby ascertain the sums which ought, in their judgment, to be charged upon the several parts of the Metropolis, and other parts charged with mortgages, debts, and liabilities at the expiration of the Act of the 11th and 12th years of Her Majesty, chapter 112, for defraying the expenses of the said *Board* (*b*) in the execution of the Metropolis Local Management Act, 1855, for the year ending 18 , under and pursuant to the said Act and the Acts for amending the same; and ordered that such sums be assessed as hereinafter specified, and they are hereby assessed upon such parts respectively, and that precepts under the common seal of the *Board* (*b*) do issue for obtaining payment thereof:—

Parishes, districts, or parts.	Sums assessed.
[*Here insert the parishes, districts, parts of parishes, &c., as for instance,*]	
City of London, the whole	
Parish of_____, the whole	
That part of the parish included in former district [*or* level *or* division].....	
That part of the parish included in former district [*or* level *or* division]	
[*And so on, adding the names of the other parishes, districts, parts of parishes, &c., on which sums are assessed, and the sums assessed.*]	

Form of Precept (*c*) *demanding one Sum assessed upon the whole of a Parish or other Place.*

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name*].

BY virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the "Metropolis,"

THE Metropolitan Board of Works do issue this their precept under their common seal to you the said vestry [*or* chamberlain, *&c.*], and do hereby require you to pay to on or before the day of now next ensuing, the sum of pounds shillings and pence, being the sum which ought, in the judgment of the said Board, to be charged upon the said parish [*or* city], *&c.*, for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said parish [*or* city, *&c.*], for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

Dated this day of 18 .

L.S.

(*b*) **Metropolitan Board.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*.

(*c*) **Forms of precepts.** These forms, though not repealed, appear to be obsolete. and to be superseded by the form of precept for the county rate issued to the guardians by the County Council. See the Loc. Govt. Act, 1888, secs. 3 (i), 40 (9), and 68 (4), *ante*; and the County Rates Act, 1852, sec. 26, *post*, vol. ii. tit. "*Rating*."

25 & 26 Vict. c. 102.

Form of Precept (d) demanding an Amount made up of a Sum assessed upon the whole of a Parish or other Place and of a Sum or Sums assessed upon a Part or Parts of such Parish or Place.

To the vestry [*or other body or person charged with payment of the amount*] of the parish [*or other place, describing it by name*].

BY virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the "Metropolis,"

THE Metropolitan Board of Works do issue this their precept under their common seal to you the said vestry, and do hereby require you to pay to on or before the day of now next ensuing, the sum of pounds shillings and pence, the sum of pounds shillings and pence, part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said Board, to be charged upon the whole of the said parish for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

* The sum of pounds shillings and pence, other part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said Board, to be charged upon that part of the said parish of which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the sewerage district, for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf. [*Where distinct sums are assessed upon other parts of the same parish, that portion of the preceding form commencing at* may be repeated in each case.*]

Dated this day 18 .

L.S.

Form of Precept (d) to a District Board of Works, demanding a Sum assessed upon the whole of a Parish within the District, or an Amount consisting of a Sum assessed upon the whole Parish, and a Sum or Sums assessed upon a Part or Parts of the same Parish.

To the board of works for the district.

BY virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the "Metropolis,"

THE Metropolitan Board of Works do issue this their precept under their common seal to you the said district board of works for the said district, and do hereby require you to pay to on or before the day of now next ensuing,* the sum of pounds shillings and pence, being the sum which ought, in the judgment of the said Board, to be charged upon the parish of within the said district for defraying the expenses of the said

(d) **Forms of precepts.** See note (*c*) on page 267.

Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf. 25 & 26 Vict. c. 102.

* [*Where the amount demanded is made up of a sum assessed upon a whole parish within the district, and also of a sum or sums assessed on a part or parts of the said parish, the form may be as follows :—*

The sum of pounds shillings and pence, part of the said sum of pounds shillings and pence, being the sum which ought, in the judgment of the said Board, to be charged upon the whole of the parish of within the said district, for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf.

The sum of pounds shillings and pence, other part of the said sum of pounds shillings and pence being the sum which ought, in the judgment of the said Board, to be charged upon that part of the said parish of within the said district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the separate sewerage district for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said part of the said parish for such purpose, under and in pursuance of the provisions of the said Act and the Act for amending the same in that behalf.]

Dated this day of 18 .

L.S.

Form of Precept (*e*) *to a District Board of Works, where Sums are assessed upon several Parishes and Parts of Parishes within the District.*

To the board of works for the district.

BY virtue of an Act passed in the nineteenth year of the reign of Queen Victoria, intituled "An Act for the better Local Management of the "Metropolis,"

THE Metropolitan Board of Works do issue this their precept under their common seal to you the said board of works for the said district, and do hereby require you to pay to the on or before the day of now next ensuing, the sum of pounds shillings and pence, being the amount of the several and respective sums of money hereunder set down and expressed opposite to and against the several parishes and parts of parishes within your said district hereinafter mentioned, which said several sums ought, in the judgment of the said Board, to be charged upon the said parishes and parts of parishes respectively for defraying the expenses of the said Board in the execution of the said Act, and which they the said Board did, on the day of 18 , ascertain and assess upon the said several parishes and parts of parishes for such purpose, under and in pursuance of the provisions of the said Act and the Acts for amending the same in that behalf :

(*e*) **Forms of precepts.** See note (*c*) on page 267.

25 & 26 Vict. c. 102.

Name of Parishes, Parts of Parishes, &c.	£	s.	d.	£	s.	d.
The parish [*or* hamlet, precinct, *&c.*] of _____ the whole of the parish. That part of the said parish [*or* hamlet, precinct, *&c.* of _____], within the said _____ district, which was at and immediately before the determination and expiration of the Metropolitan Sewers Act, 1848, included in the _____ sewerage district, [*and so on in the case of each parish, part of a parish, &c.*]						

Dated this day of 18 .

L.S.

METROPOLIS MANAGEMENT ACT, 1862, AMENDMENT ACT, 1890.

53 & 54 Vict. c. 54. An Act to amend the seventy-eighth section of the Metropolis Management Amendment Act, 1862.

[18th August, **1890**

1. [*Repeal of sec.* 78 *of Metropolis Management Amendment Act*, 1862.] In case any footway or any part of a footway laid out at the passing of the Metropolis Management Act, 1855, shall have been repaired by the vestry or district board of works, or any other public body, but such footway or any part thereof shall not have been flagged or only partially flagged, and the vestry or district board of works shall have deemed it necessary or expedient, or shall deem it necessary or expedient (*a*), that the same should be flagged either throughout the whole length and breadth thereof or any part of such length or breadth respectively (*b*), and such vestry or district board shall have flagged or be about to flag the same, the owners (*c*) of the houses (*d*) and the owners of the land bounding or abutting (*e*) on the road or street in which such footway or any part thereof is situate, shall on demand pay to such vestry or district board of works the amount of the expense incurred, or the estimated expense to be incurred, in providing and laying such flagging; and in the case of estimated expense where the same shall exceed the actual expense of such flagging, then the difference between such estimated expense and such actual expense shall be repaid by the vestry or district board to the owners of houses and land by whom the said estimated expense has been paid; and in case the said estimated expense be less than the actual expense of such paving, then the owners of the said houses and land shall on demand pay to the vestry or district board such further sum of money as, together with the sum already paid, amounts to the actual expense: provided that it shall be lawful for the said vestry or district board to charge the owners of land in a less proportion than the owners of house property should they (the said vestry or district board) deem it just and expedient so to do.

Repeal of 25 & 26 Vict. c. 102, s. 78.

Vestries and district boards may flag footpaths and recover expense from owners.

2. The expense aforesaid, whether estimated or actual (including the cost of flagging at the points of intersections of street, and all other incidental costs and charges), shall be ascertained and apportioned (*f*) by the

Apportionment and recovery of expense.

(*a*) **Necessary or expedient.** See *Stroud* v. *Wandsworth Dist. Bd.*, *ante*, p. 257.

(*b*) **Part of such length, &c.** Where the footway does not extend the whole length of the street, or where only a part of it is paved, the liability is limited to the owners (on both sides of the road) of houses or land bounding or abutting on that section of the road which contains the footway or part of the footway which has been or is about to be flagged. *Paddington Vestry* v. *North Metropolitan Ry. and Canal Co.*, *ante*, p. 257.

(*c*) **Owners.** See Met. Man. Act, 1855, sec. 250, *ante*, for definition of "owner." The repealed sec. 78 of the Met. Man. Am. Act, 1862, threw these expenses upon the occupier.

(*d*) **Houses.** As to what is a house, see note to sec. 73 of the Met. Man. Act, 1855, *ante*.

(*e*) **Bounding or abutting.** See note (*m*) to sec. 77 of the Met. Man. Am. Act, 1862. *ante*.

(*f*) **Apportionment.** See note (*p*) to sec. 77 of the Met. Man. Amend. Act, 1862, *ante*.

53 & 54 Vict. c. 54.

vestry or district board amongst the parties liable to pay the same under the preceding section of this Act, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion, from the owner of the premises, either by action-at-law or in a summary manner (*g*) before a justice of the peace at the option of the vestry or district board, as provided for by the two hundred and twenty-fifth section of the said Metropolis Management Act, 1855.

Vestry or board to keep flagging in repair.

3. After [illegible]stry or district board has flagged any footway under the provisions [illegible]Act, the said vestry or board shall keep the said flagging in good and sufficient repair.

Interpretation of terms.

18 & 19 Vict. c. 120.

25 & 26 Vict. c. 102.

4. In the construction of this Act all the provisions contained in the two hundred and fiftieth section of the said Metropolis Management Act, 1855, and the one hundred and twelfth section of the said Metropolis Management Amendment Act, 1862, shall be deemed and taken to apply to and extend to the provisions of this Act, and the term "flag" or "flagging" shall include asphalte or other similar paving material, and the term "paved" shall include asphalted or other similar paved work.

Construction of Act.

5. Except as by this Act expressly amended or varied, the said Metropolis Management Act, 1855, and the several Acts passed for the amendment of the said Act and this Act shall be construed together as one Act.

Short title.

6. This Act may be cited as the Metropolis Management Act, 1862, Amendment Act, 1890.

(*g*) **Action . . . summary manner.** See note to sec. 63 of the Met. Man. Amend. Act, 1862, *ante*.

METROPOLIS MANAGEMENT AMENDMENT ACT, 1890.

53 & 54 Vict. c. 66. An Act to amend the Metropolis Management Acts. [18th August, **1890**

Short title.

1. This Act may be cited for all purposes as the Metropolis Management Amendment Act, 1890.

Interpretation. 18 & 19 Vict c. 20.

2. In this Act—

"The Metropolis Management Acts" includes the Metropolis Management Act, 1855, and any Acts amending the same.

Terms to which meanings are assigned by the Metropolis Management Acts have the same respective meanings.

"The council" means the London County Council.

Power to vestry or district board to repair a road or way not being a street.

3. Any vestry or district board may from time to time execute any necessary works (*a*) of repair upon any or any part of any carriage road within their parish or district which shall have been used for not less than six months for public traffic and which may not at the time of such repair have become repairable by them, and shall not by undertaking such repair prejudice or affect the powers of such vestry or district board to apportion and recover the expenses of paving such road or way if and when the same shall be paved as a new street under the Metropolis Management Acts (*b*).

The expenses of and incident to such repair may in the first instance be paid by the vestry or district board in the same manner as the expenses of repairing other streets repairable by them, and shall as soon as may be thereafter be apportioned upon and recovered from the owners (*c*) of the houses (*d*) and land bounding or abutting (*e*) on such road or part thereof in the same manner as if such expenses were expenses of paving such road or part thereof as a new street under the provisions of the Metropolis Management Acts relative thereto, and the amount of the expenses so apportioned may be recovered by the vestry or district board in a court of competent jurisdiction.

Provided that no railway company shall be liable under this section to pay the proportion of the expenses of and incident to such works of repair apportioned upon them in respect of lands abutting on any such road and used solely as part of their line of railway and sidings, and having no direct communication with such road, and the amount apportioned upon any such company in respect thereof shall be paid by the vestry or district board. But in the event of such company making a direct com-

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(*a*) **Necessary works.** The vestry or district board are the sole judges as to the necessity of such work, provided only that they act *bonâ fide*, and they are not bound to prove its necessity to the satisfaction of the tribunal before which they seek to recover the expenses. *Stroud* v. *Wandsworth Dist. Bd.* (1894), 2 Q. B. 1; 63 L. J. M. C. 88. See note (*x*) to sec. 135 of the Met. Man. Act, 1855, *ante*.

(*b*) **New street** is defined by sec. 112 of the Met. Man. Am. Act, 1862, *ante*. As to the expenses of paving new streets, see *ib.*, sec. 77, *ante*, and the Met. Man. Act, 1855, sec. 105, *ante*, and Met. Man. Act, 1862, Amend. Act, 1890, sec. 1, *ante*.

(*c*) **Owner** is defined by sec. 250 of the Met. Man. Act, 1855, *ante*.

(*d*) **Houses.** As to what is a house, see note (*r*) to sec. 73 of the Met. Man. Act, 1855, *ante*.

(*e*) **Bounding or abutting on.** See note (*m*) to sec. 77 of the Met. Man. Amend. Act, 1862, *ante*.

53 & 54 Vict. c. 66.

munication with such road before the same is taken over by the vestry or district board, a just share of the said expenses shall be payable by such company to the vestry or district board, and the amount of such share shall, in case of difference between the railway company and the vestry or district board, be fixed in a summary way by any metropolitan police magistrate in whose district such road shall be wholly or partly situate, and shall be payable on demand to the vestry or district board.

Penalty for making sewers contrary to plans approved.

4. Any person making any sewer, or branching any sewer or drain (*f*) into any sewer vested in the council (*g*), without the approval in writing of the council first had and obtained, or otherwise than in accordance with a plan and section thereof approved by the council, or causing any such sewer or drain to be so made or branched shall be liable to a penalty not exceeding fifty pounds.

The council may by notice in writing to the owner or owners (*h*) of the premises connected with the sewer or drain so improperly made or branched, or (if there are no such premises) of the land in which it is placed, require such owner or owners forthwith to remove such sewer or drain or to reconstruct the same at his or their expense to the approval of the council in accordance with the plan and section approved as aforesaid, and in the event of such owner or owners failing to comply with the terms of such requisition, such owner or owners, as the case may be, shall be severally liable to a penalty not exceeding five pounds for every day during which he or they shall fail to comply therewith. And the council may execute the works required and recover the costs and expenses thereof in a court of summary jurisdiction from the person who shall have made or branched, or caused to be made or branched, the sewer or drain, or from the owner or owners of the premises connected therewith, or (if there are no such premises) of the land in which it is placed. Provided that if the premises of more than one owner are at the time of the commencement of the work by the council connected with any such sewer, the costs and expenses thereof shall be apportioned amongst and recoverable from such owners in proportion to the rateable value of the premises respectively connected therewith.

Provided also that in the event of any such costs and expenses being paid to the council by any such owner or owners then such owner or owners shall be entitled to recover in a court of summary jurisdiction the amount so paid by them from the person who made or branched or caused such sewer or drain to be made or branched in manner aforesaid.

Penalty in case of connexions with local sewers.

5. Any person making any sewer or branching any sewer or drain (*f*)

(*f*) **Sewer . . . drain.** For definition of "sewer" and "drain," see Met. Man. Act, 1855, sec. 250, *ante*. For regulations and provisions as to the construction of sewers, see Met. Man. Act, 1855, secs. 69 and 138, *ante*; and the Met. Man. Amend. Act, 1862, secs. 45—51, and sec. 83, *ante*.

(*g*) **Vested in County Council.** All the main sewers of the Metropolis are vested in the London County Council. Met. Man. Act, 1855, sec. 135, *ante*; and also such sewers as may have been transferred to them by any vestry or district board under sec. 89 of that Act, *ante*.

(*h*) **Notice to owner or owners.** Under sec. 50 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), where separate notices had been served on six owners, requiring them to do certain sewerage and paving works, and one of them made default, it was held that the sanitary authority was not bound to give the defaulting owner a fresh notice specifying the particular work which remained to be done, before themselves executing it. *Simcox* v. *Handsworth Loc. Bd.*, 8 Q. B. D. 39; 51 L. J. Q. B. 168.

into any sewer vested in any vestry or district board (*i*) without the approval in writing of such vestry or district board first had and obtained or otherwise than in accordance with the plan and section thereof, if any, approved by the council under the provisions of the Metropolis Management Acts relative thereto, or causing any such sewer or drain to be so made or branched, shall be liable to a penalty not exceeding fifty pounds. The vestry or district board concerned may, by notice in writing to the owner or owners (*k*) of the premises connected with the sewer or drain so improperly made or branched, or (if there are no such premises) of the land in which it is placed, require such owner or owners forthwith to remove such sewer or drain or to reconstruct the same at his or their expense to the approval of such vestry or district board and in accordance with the plan and section approved as aforesaid, and in the event of such owner or owners failing to comply with the terms of such requisition, such owner or owners, as the case may be, shall be severally liable to a penalty not exceeding five pounds for every day during which he or they shall fail to comply therewith, and the vestry or district board may execute the works required and recover the costs and expenses thereof in a court of summary jurisdiction from the person who shall have made or branched or caused to be made or branched the sewer or drain, or from the owner or owners of the premises connected therewith, or (if there are no such premises) of the land in which it is placed. 53 & 54 Vict. c. 66.

Provided that if the premises of more than one owner are at the time of the commencement of the work by the vestry or district board connected with any such sewer, the costs and expenses thereof shall be apportioned amongst and recoverable from such owners in proportion to the rateable value of the premises respectively connected therewith.

Provided also that in the event of any such costs and expenses being paid to the vestry or district board by any such owner or owners, then such owner or owners shall be entitled to recover in a court of summary jurisdiction the amount so paid by them from the person who made or branched or caused such sewer or drain to be made or branched in manner aforesaid.

Subsoil under a street road passage or way not to be removed without the consent of the vestry or district board or council.

6. Subject to the provisions of this Act, it shall not be lawful after the passing of this Act to form or lay out or to commence to form or lay out any street road passage or way over land from which sand gravel or other subsoil has been excavated or removed, until the site and subsoil of the street road passage or way has been properly levelled and made good to a sufficient depth with stones gravel or other suitable material to form a sound foundation, to the satisfaction of the vestry or district board to be expressed in writing, and it shall not be lawful to excavate remove or take away any sand gravel or subsoil from any land upon which any street road passage or way has been wholly or in part formed or laid out, or upon which it is intended to form or lay out any street road passage or way, except upon such conditions as to the levelling and making a

(*i*) **Vested in vestry or district board.** All sewers, other than main sewers, in the Metropolis, are vested in the various vestries and district boards, except in the City and Woolwich, where they are vested in the Commissioners of Sewers of the City, and the Woolwich Local Board respectively. Met. Man. Act, 1855, sec. 68, and note (*z*) thereto, *ante*, p. 134; unless they have been transferred to the County Council under sec. 89 of that Act, *ante*, p. 144.

(*k*) **Notice to owner or owners.** See note (*h*) on page 274.

53 & 54 Vict. c. 66.

proper foundation for the same as the vestry of the parish or district board of the district may in writing impose (*l*). Provided that this section shall not apply where no more sand gravel or subsoil has been or is intended to be excavated removed or taken away than is necessary to level or form a foundation for the paving metalling or flagging of any street road passage or way. If the vestry or district board shall refuse their approval in writing, or shall impose conditions, any company or person dissatisfied with such refusal or with such conditions may, within seven days (*m*) from the date of receiving notice of such refusal or of such conditions, appeal to the council, and such appeal shall stand referred to such committee of the council as the council may appoint (*n*), and such committee shall have power to confirm or reverse such refusal, or to vary the conditions imposed or impose such conditions as they may think fit, and their determination shall be final, and such committee may order any costs of such appeal to be paid to or by the vestry or district board or person appealing. Any company or person forming or laying out, or commencing to form or lay out, any street road passage or way, or excavating removing or taking away any sand gravel or subsoil contrary to the provisions of this Act or to the conditions imposed by the vestry or district board, or on appeal by the council, shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding twenty shillings for every day after the first during which the offence is continued, or during which such excavation shall be permitted to remain without the consent in writing of the vestry or district board or on appeal of the council.

Provided always that nothing in this section contained shall apply to any road passage or way formed or laid out, or to be formed or laid out, and intended to be maintained as a road passage or way not open to public use.

Provided also that nothing in this section contained shall prejudice or affect any existing rights of the owners of property fronting or abutting on any street, road, passage, or way, to excavate subsoil for the purpose of forming or constructing cellars, vaults, subways, or basements in connection with buildings erected on such property.

Surveyor or other officer to see that conditions are observed.

7. The surveyor of the vestry or district board, or other officer of the vestry or district board, or any officer appointed for that purpose by the council, shall take care that the provisions of the preceding section are complied with, and that any conditions imposed by the vestry or district board or the council in giving their consent in writing thereunder are observed.

Limited application of Act to City of London.

8. Except so far as relates to any sewers vested in the council, none of

(*l*) **Except upon conditions.** Where the owner of land, with the consent of the County Council, was about to lay out a new street, with a sewer and drains, and the district board refused their approval of the excavation of any gravel or subsoil beyond what was necessary to level or form a foundation for paving the street, it was held that the only power given to the district board by this section was to impose conditions, and that they had no power to place their veto upon excavation. *Wandsworth Dist. Bd.* v. *Bird* (1892), 1 Q. B. 481; 61 L. J. M. C. 97.

(*m*) **Within seven days.** See note to sec. 211 of the Met. Man. Act, 1855, *ante*.

(*n*) **Appeal.** By sec. 212 of the Met. Man. Act, 1855, *ante*, the County Council are required to appoint a committee for the purpose of hearing all appeals made to them under that Act; but appeals under the present section may be referred by the Council to any committee they may choose to appoint.

the provisions contained in this Act shall have any force or effect within the City of London. 53 & 54 Vict. c. 66.

9. Penalties and expenses under this Act may be sued for and recovered either by the council or by the vestry or district board concerned in the same manner as penalties under the Metropolis Management Act, 1855, and the Acts amending the same (*o*). Penalties and expenses.

10. Any costs charges and expenses incurred by the council of and incidental to the preparing applying for and passing of this Act shall be paid by the council. Expenses o Act.

(*o*) **Recovery of expenses, &c.** See the Met. Man. Act, 1855, sec. 227, *ante*.

PUBLIC HEALTH (LONDON) ACT, 1891.

54 & 55 Vict. c. 76. An Act to consolidate and amend the Laws relating to Public Health in London. [5th August, **1891**

Sanitary authority to inspect district for detection of nuisances.

1. It shall be the duty of every sanitary authority (*a*) to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act for the purpose of abating the same, and otherwise to put in force the powers vested in them relating to public health and local government, so as to secure the proper sanitary condition of all premises within their district.

Nuisances (General).

What nuisances may be abated summarily.

2.—(1) For the purposes of this Act,—

(a) Any premises in such a state (*b*) as to be a nuisance or injurious or dangerous to health (*c*);

(*a*) **Duty of sanitary authority.** For definition of "sanitary authority," see sec. 99, *post*. As to proceedings by the Loc. Govt. Bd., on default of the sanitary authority in the City, see secs. 134 and 135, *post*; and by the County Council or Loc. Govt. Bd., on default of a sanitary authority in other parts of the Metropolis, see secs. 100 and 101, *post*.

(*b*) **Premises in such a state.** See sec. 141, *post*, for definition of "premises." Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 91, Wills. J., in delivering the judgment of the Court in *Reg.* v. *Parlby*, 22 Q. B. D. 520; 58 L. J. M. C. 49, said: "We think it" (the expression "premises in such a state as to be a nuisance or injurious to health") "is confined to cases in which the premises themselves are decayed, dilapidated, or out of order, where houses have been inhabited by tenants whose habits and ways of life have rendered them filthy or impregnated with disease, or where foul matter has been allowed to soak into the walls or floors, or where they are so dilapidated as to be a source of danger to life or limb." In that case it was held that sec. 91 of the Pub. Hlth. Act, 1875, does not apply to nuisances arising from sewage tanks and works constructed by a local board, the remedy being to obtain leave to file an information in the name of the Attorney-General. The London County Council are required to construct and maintain their sewers and sewage works so as not to create a nuisance. Met. Man. Act, 1855, sec. 135, *ante*, and see notes thereto. See also sec. 69 of that Act, *ante*, as to restrictions on nuisances by vestries and district boards in discontinuing or altering sewers. A house which is in a ruinous state, and likely to fall down, is a nuisance, and neglect to abate the nuisance is an offence indictable at common law. *Reg.* v. *Watts*, 1 Salk. 356. As to where a nuisance arises from the purpose for which premises are used under statutory powers, see *Vernon* v. *St. James, Westminster*, 16 Ch. D. 449; 50 L. J. Ch. 81; *Metropolitan Asylum Managers* v. *Hill*, 6 App. Cas. 193; 50 L. J. Q. B. 353; *London and Brighton Rly. Co.* v. *Truman*, 11 App. Cas. 45; 54 L. J. Ch. 849; *Harrison* v. *Southwark and Vauxhall Water Co.* (1891), 2 Ch. 409; 60 L. J. Ch. 630; *Rapier* v. *London Tramways Co.* (1893), 2 Ch. 588; 63 L. J. Ch. 36.

As to the power of the County Council to deal with structures which are in a dangerous or dilapidated state, see the London Building Act, 1894, secs. 102—117, *post*, p. 442.

(*c*) **Nuisance or injurious or dangerous to health.** It is to be observed that these words are disjunctive. In the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), sec. 8, the words used were "nuisance or injurious to health." It was held that the Act, being a sanitary Act, applied only to such nuisances as affected public health, and did not apply to a case of rain-water dripping from a railway bridge on to persons using the highway. *Great Western Rly. Co.* v. *Bishop*, L. R. 7 Q. B. 550; 41 L. J. M. C. 120. This case was distinguished in *Bishop Auckland Loc. Bd.* v. *Bishop Auckland Iron Co.*, 10 Q. B. D. 138; 52 L. J. M. C. 38, where it was held by Stephen, J., that the words "nuisance or injurious to health" in sec. 91 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), do no not mean "nuisance injurious to health," but mean "a nuisance either interfering with personal comfort or injurious to health." See also *Malton Loc. Bd.* v. *Malton Manure Co.*, 4 Ex. D. 302; 49 L. J. M. C. 90; and *Houldershaw* v. *Martin*, 1 T. L. R. 323; 49 J. P. 179.

(b) Any pool, ditch, gutter, watercourse, cistern, watercloset, earth closet, privy, urinal (*d*), cesspool, drain (*e*), dung-pit, or ashpit, so foul or in such a state as to be a nuisance or injurious or dangerous to health; 54 & 55 Vict. c. 76.

(c) Any animal (*f*) kept in such place or manner as to be a nuisance or injurious or dangerous to health;

(d) Any accumulation or deposit (*g*) which is a nuisance or injurious or dangerous to health;

(e) Any house (*h*) or part of a house so overcrowded (*i*) as to be injurious or dangerous to the health of the inmates (*k*), whether or not members of the same family;

(f) Any such absence from premises of water fittings as is a nuisance by virtue of section thirty-three of the Metropolis Water Act, 1871 (*l*), set out in the first schedule to this Act; and 34 & 35 Vict. c. 113.

(g) Any factory, workshop, or workplace which is not a factory subject

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(*d*) **Urinal.** The owner of a public house erected a urinal in a private passage leaving a space between the area railings in the street and the urinal door. Persons habitually used the space so left so as to cause a nuisance to the neighbours, and it was held that the owner was responsible for such user, it being a probable consequence of the manner in which he had arranged the premises. *Chibnall* v. *Paul and Son*, 29 W. R. 536.

(*e*) **Drain** is not defined in this Act. See definition of "drain" in the Met. Man. Act, 1855, sec. 250, *ante*. As to what has been held to be a nuisance arising from a drain under other Acts, see *Molloy* v. *Gray*, 24 L. R. Ir. 258; *St. Helen's Chemical Co.* v. *St. Helen's Corporation*, 1 Ex. D. 196; 54 L. J. M. C. 150.

(*f*) **Any animal.** Under the Pub. Hlth. Act, 1875, it was held that it is not necessary to prove that the keeping of swine is injurious to health. *Banbury Sanitary Authority* v. *Page*, 8 Q. B. D. 97: 51 L. J. M. C. 38. See sec. 17, *post*, restricting the keeping of swine in London; sec. 18, as to prohibiting the keeping of animals in unfit places; sec. 20, as to cow-houses; sec. 28, as to dairies; and sec. 16 (c), directing every sanitary authority to make byelaws for the prevention of the keeping of animals so as to be a nuisance, &c.

(*g*) **Accumulation or deposit.** See *Att.-Gen.* v. *Tod-Heatly*, *post*, p. 301. Under the Pub. Hlth. Act, 1875, it was held that an offence was committed where heaps of smouldering cinders emitted offensive smells, which interfered with the personal comfort of persons living in the neighbourhood, but did not cause injury to health. *Bishop Auckland Loc. Bd.* v. *Bishop Auckland Iron Co., supra*. As to sheep-droppings, see *Draper* v. *Sperring*, *post*, p. 281; accumulations of dung, *Smith* v. *Waghorn*, 27 J. P. 744; and accumulations of seaweed, *Margate Pier Proprietors* v. *Margate Town Council*, note (*x*) to sec. 4 (1), *post*. As to sanitary authorities' duties and powers, with regard to the removal of refuse and obnoxious accumulations, see secs. 29—36, *post*.

(*h*) **House.** See definition of "house" in sec. 141, *post*, and also see note to sec. 73 of the Met. Man. Act, 1855, *ante*, p. 137. A building used for religious service in the daytime, and as a shelter for the homeless at night, and containing no sleeping accommodation, the persons admitted sleeping on chairs or the bare floor, is a house within the present sub-section. *Reg.* v. *Mead*, *Ex parte Gates*, 64 L. J. M. C. 169; 59 J. P. 150; *Reg.* v. *Slade*, *Ex parte Robinson*, *infra*. A vessel lying within the district of a sanitary authority is subject to the jurisdiction of that authority, as if it were a house within such district. Sec. 110, *post*.

(*i*) **Overcrowded.** If two convictions for overcrowding in the same house occur within three months, the house may be closed on the order of a petty sessional court. Sec. 7, *post*. As to overcrowding tents and vans, see sec. 95, *post*. Every sanitary authority is required to make byelaws fixing the number who may occupy a house or part of a house let in lodgings or occupied by the members of more than one family.

(*k*) **Inmates.** Temporary occupiers of a night shelter are "inmates" for the purposes of this sub-section. *Reg.* v. *Slade*, *Ex parte Robinson*, 65 L. J. M. C. 108; 60 J. P. 358.

(*l*) **Metropolis Water Act, 1871,** sec. 33, *post*, vol. ii. tit. "*Water*." Such absence of water fittings is deemed to render the premises unfit for human habitation, unless and until the contrary is shown. *Ib.* and sec. 4 (3) (d) of the present Act, *post*.

54 & 55 Vict. c. 76.

41 & 42 Vict. c. 16.

to the provisions of the Factory and Workshop Act, 1878 (*m*), relating to cleanliness, ventilation, and overcrowding, and

(i) is not kept in a cleanly state and free from effluvia arising from any drain, privy, earth closet, watercloset, urinal, or other nuisance or

(ii) is not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious or dangerous to health, or

(iii) is so overcrowded while work is carried on as to be injurious or dangerous to the health of those employed therein (*n*),

shall be nuisances liable to be dealt with summarily under this Act (*o*).

(2) Provided that—

(i) Any accumulation or deposit necessary for the effectual carrying on of any business or manufacture (*p*) shall not be punishable as a nuisance under this section, if it is proved to the satisfaction of the court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health; and

(ii) In considering whether any dwelling-house or part of a dwelling-house which is used also as a factory, workshop, or workplace, or whether any factory, workshop, or workplace used also as a dwelling-house, is a nuisance by reason of overcrowding, the court shall have regard to the circumstance of such other user.

Information of nuisances to sanitary authority.

3. Information of a nuisance liable to be dealt with summarily under this Act (*q*) in the district of a sanitary authority may be given to that authority (*r*) by any person, and it shall be the duty of every officer to that authority and every relieving officer, in accordance with the regulations of the authority having control over him, to give that information; and it shall be the duty of the said authority to make the said regulations, and also the duty of the sanitary authority to give such directions to their

(*m*) **Factory, workshop, workplace.** Neither of these words is defined in this Act. The factories and workshops to which the Factory and Workshop Act, 1878, applies, are defined by sec. 93 of that Act, *post*, vol. ii. That Act uses the word "workplace" in sec. 101, but contains no definition of it.

(*n*) **Overcrowded.** "A workshop shall for the purpose of the law relating to public health be deemed to be so overcrowded as to be dangerous or injurious to the health of the persons employed therein, if the number of cubic feet of space in any room therein bears to the number of persons employed at once in the room a proportion less than two hundred and fifty, or, during any period of overtime, four hundred cubic feet of space to every person." Factory and Workshop Act, 1895, sec. 2 (1), *post*, vol. ii. A notice is required to be fixed at the entrance of a factory or workshop specifying the number of persons who may be employed in each room. *Ib.* sec. 2 (3).

(*o*) **Dealt with summarily.** See secs. 3—8, *post*. Nuisances arising from the treatment or disposal of street refuse by a sanitary authority, and nuisances caused by smoke from factories, &c., are also nuisances liable to be dealt with summarily. See secs. 22 (2) and 24, *post*.

(*p*) **Accumulation of business, &c.** See secs. 19—22, *post*, for regulations as to offensive businesses. By sec. 22, *post*, removal of house and street refuse when collected or deposited by a sanitary authority, is deemed to be a business carried on by such authority within the meaning of sec. 21, *post*.

(*q*) **Nuisance liable to be dealt with summarily.** See sec. 2, *ante*, and secs. 22 (2) and 24, *post*. This section applies only to nuisances liable to be dealt with summarily under this Act, and not to nuisances arising from offensive trades dealt with by sec. 21, *post*. *Bird* v. *St. Mary Abbot's, Kensington* (1895), 1 Q. B. 912; 64 L. J. M. C. 215.

(*r*) **Information of nuisance.** Any person may complain direct to a justice instead of to the sanitary authority. Sec. 12, *post*.

officers as will secure the existence of the nuisance being immediately brought to the notice of any person who may be required to abate it, and the officer shall do so by serving a written intimation (*s*). 54 & 55 Vict. c. 76.

Notice requiring abatement of nuisance.

4.—(1) On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act (*t*) the sanitary authority shall, if satisfied of the existence of a nuisance, serve a notice (*u*) on the person by whose act, default, or sufferance (*x*) the nuisance arises or

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(*s*) **Intimation to abate nuisance.** Where the owner of two houses received a notice from a vestry to repair a defective drain, which, on opening up, he discovered to be a sewer, it was held by Chitty, J., that he was entitled to recover the money he had expended in repairing it. *Florence* v. *Paddington Vestry* (1895), W. N. 143 (9).

Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 41, however, it was held that a notice from the sanitary authority to abate a nuisance arising from an alleged drain, which, in fact, is a sewer, is not a request to do the work which will support an action by the owner to recover from the sanitary authority his expenses incurred in complying with the notice. *Self* v. *Hove Commissioners* (1895), 1 Q. B. 685; 64 L. J. Q. B. 217. This latter case was followed by His Honour Judge Emden, who declined to follow *Florence* v. *Paddington Vestry*, *supra*; *Klett* v. *Camberwell Vestry*, 60 J. P. 411.

(*t*) **Nuisance liable to be dealt with summarily.** See note (*q*) on page 280.

(*u*) **Notice.** For form of notice see sched. 3, *post*. The notice must be in writing, and should be signed by the clerk of the sanitary authority, or by the officer by whom it is served. Sec. 127, *post*. As to service of notice, see sec. 128, *post*. A notice that "the premises were so overcrowded as to be injurious or dangerous to the health of the inmates," and a summons and an order founded on such notice, are sufficient to convey to the recipient that the nuisance complained of related to the overcrowding of a "house" within sec. 2 (1) (e), *ante*. *Reg.* v. *Slade*, *Ex parte Robinson*, 65 L. J. M. C. 108; 60 J. P. 358.

It would appear that the sanitary authority, or a committee duly appointed in that behalf, must authorise the service of each notice specifically, and that the power cannot be exercised by a sub-committee, or by an officer acting under a general authority. See *St. Leonard's, Shoreditch* v. *Holmes*, *ante*, p. 138.

(*x*) **Person by whose act, &c.** The superintendent of a night shelter for the homeless and destitute is a person by whose act, default, or sufferance a nuisance consisting in the overcrowding of the building arises. *Reg.* v. *Mead*, *Ex parte Gates*, 64 L. J. M. C. 169; 59 J. P. 150. Under corresponding provisions in other Acts, the following cases have been decided. The proprietors of a harbour were liable for a nuisance arising from an accumulation of seaweed in the harbour. *Margate Pier, &c., Proprietors* v. *Margate Town Council*, 33 J. P. 437; 20 L. T. (N. S.) 564. The owner of a market was liable for a nuisance caused by droppings from sheep therein, although other persons had been in the habit of clearing them away. *Draper* v. *Sperring*, 10 C. B. (N. S.) 113; 30 L. J. M. C. 225. But the lord of a manor was not liable in respect of a filthy pond on a common of the manor. *Richmond Union* v. *Dean and Chapter of St. Paul's*, 18 L. T. (N. S.) 522; 32 J. P. 374. The owner of several houses and pigstyes, let to yearly tenants, drained them into a drain which he made through the adjoining land with the permission of the proprietor, thereby polluting a neighbouring stream. Held that the owner of the houses and pigstyes was the person by whose act, &c., the nuisance arose. *Brown* v. *Russell*, L. R. 3 Q. B. 251; 37 L. J. M. C. 65. The owner of land demised to a tenant, made a sewer thereunder, without the tenant's consent, for the drainage of some adjacent houses. The tenant stopped up the sewer, thereby causing a nuisance in the houses, for which he was held to be liable. *Riddell* v. *Spear*, 43 J. P. 317; 40 L. T. (N. S.) 130; *Liverpool, Ex parte (Mayor, &c., of)*, 27 L. J. M. C. 89; 22 J. P. 562; *St. Helen's Chemical Co.* v. *St. Helen's Corporation*, 1 Ex. D. 196; 54 L. J. M. C. 150; *Reg.* v. *Parlby*, note (*b*) to sec. 2 (1) (a), *ante*; *Chibnall* v. *Paul and Son*, note (*d*) to sec. 2 (1) (b), *ante*; *Fordom* v. *Parsons* (1894), 2 Q. B. 780; 64 L. J. M. C. 22. A sanitary authority contracted to deliver their ashes and manure at a field of which they were not the owners. The ashes, &c., when deposited caused a nuisance. Held that an order on the sanitary authority to prohibit a recurrence of the nuisance was good; but an order to abate it was bad, for it prescribed an act the execution of which might involve the committal of a trespass. *Scarborough (Mayor, &c., of)* v. *Scarborough Rural Sanitary Authority*, 1 Ex. D. 344; 40 J. P. 726. This case was followed in *Reg.* v. *Trimble*, 36 L. T. (N. S.) 508; 41 J. P. 454; and in *Letterkenny Commissioners* v. *Collins*, 28 L. R. Ir. 235. But it was held that an order might be made on an owner of premises demised to a tenant, to abate a nuisance arising thereon from the defective construction of a structural convenience; and that the owner should, in such circumstances, satisfy the Court that he

54 & 55 Vict. c. 76.

continues, or, if such person cannot be found, on the occupier or owner (*y*) of the premises on which the nuisance arises, requiring him to abate the same within the time specified (*z*) in the notice, and to execute such works and do such things as may be necessary for that purpose, and, if the sanitary authority think it desirable (but not otherwise) specifying any works to be executed.

(2) The sanitary authority may also by the same or another notice served on such occupier, owner, or person require him to do what is necessary for preventing the recurrence of the nuisance (*a*), and, if they think it desirable, specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the sanitary authority consider that it is likely to recur on the same premises.

(3) Provided that—

(a) where the nuisance arises from any want or defect of a structural character (*b*), or where the premises are unoccupied, the notice shall be served on the owner:

(b) where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance (*c*) of the occupier or owner of the premises, the sanitary authority may themselves abate the same and may do what is necessary to prevent the recurrence thereof (*d*):

(c) where the medical officer of health certifies to the sanitary authority

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has used all due diligence to carry out the order, but has been unable to do so, e.g., because the tenant refuses to allow him to enter the premises. *Parker* v. *Inge*, 17 Q. B. D. 584; 55 L. J. M. C. 149.

As to what persons are liable where a nuisance arises from smoke, see secs. 23 and 24, *post*, and notes thereto.

As to proceedings where the nuisance is caused by the acts or defaults of two or more persons, see sec. 120, *post*.

(*y*) **Owner** is defined by sec. 141, *post*. The Thames Conservators are owners of the soil and foreshore of the River Thames for certain specified purposes only, and are not owners for the purposes of this section. *Thames Conservators* v. *London Port Sanitary Authority* (1894), 1 Q. B. 647; 63 L. J. M. C. 121. The liability of an occupier or owner under this sub-sec. (1) is subject to the proviso of sub-sec. (3) (b), *infra*. *Ib.*

(*z*) **Time specified.** Under sec. 94 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), a notice requiring the abatement of a nuisance "forthwith" was held to sufficiently specify the time. *Thomas* v. *Nokes* (2), 58 J. P. 672; *Thomas* v. *Western Steam Trawling Co.*, 59 J. P. 232. See also *Thomas* v. *Nokes* (1), L. R. 6 Eq. 521.

(*a*) **Recurrence of nuisance.** The facts in *Draper* v. *Sperring*, *supra*, p. 281, were held to constitute a recurring nuisance.

(*b*) **Structural character.** Where a notice was served on the occupier, but not on the owner, requiring him to abate a nuisance arising from a stoppage of the drains, and it was subsequently discovered that the stoppage arose from a structural defect in the drains, it was held that the occupier was entitled under sec. 11 (1), *post*, to recover from the owner the cost of abating the nuisance. *Gebhardt* v. *Saunders* (1892), 2 Q. B. 452; 56 J. P. 741.

(*c*) **Act, default, or sufferance.** Where the person causing the nuisance cannot be found, the liability of the owner of the premises to abate it only arises where it is shown that it continues by his act, default, or sufferance. Where therefore foul mud, largely composed of decaying organic matter, floated into and accumulated in a tidal creek of the River Thames, and caused a nuisance, it was held that the conservators were not liable, independently of the fact that they are not owners within the meaning of this Act. *Thames Conservators* v. *London Port Sanitary Authority*, *supra*.

(*d*) **Sanitary authority may abate.** Where the person causing the nuisance, or the owner or occupier of the premises, cannot be found, the Court may order the sanitary authority to do what is necessary to abate the nuisance. Sec. 8, *post*. The sanitary authority may sell any matter or thing removed in abating a nuisance (sec. 9, *post*), and may recover the costs incurred from the person in default. Sec. 11, *post*.

that any house or part of a house in their district is so overcrowded (*e*) as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, the sanitary authority shall take proceedings under this section for the abatement of such nuisance: 54 & 55 Vict. c. 76.

(d) where the nuisance is such absence of water-fittings as is declared a nuisance by section thirty-three of the Metropolis Water Act, 1871 (*f*) (set out in the first schedule to this Act), such absence shall be deemed to render the premises unfit for human habitation unless and until the contrary is shown to the satisfaction of the court. 34 & 35 Vict. c. 113.

(4) Where a notice has been served on a person under this section, and either—

(a) the nuisance arose from the wilful act or default of the said person; or

(b) such person makes default in complying with any of the requisitions of the notice within the time specified,

he shall be liable to a fine not exceeding ten pounds for each offence, whether any such nuisance order as in this Act mentioned is or is not made upon him.

On non-compliance with notice, order to be made.

5.—(1) If either—

(a) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or

(b) the nuisance, although abated since the service of the notice, is, in the opinion of the sanitary authority, likely to recur on the same premises,

the sanitary authority shall make a complaint (*g*), and the petty sessional court (*h*) hearing the complaint may make on such person a summary order (in this Act referred to as a nuisance order) (*i*).

(2) A nuisance order may be an abatement order, a prohibition order, or a closing order, or a combination of such orders.

(*e*) **Overcrowded.** Sub-sec. (3) (c) is an amplification of sec. 2 (1) (e), *ante*.

(*f*) **Absence of water fittings.** Sub-sec. (3) (d) repeats in substance sec. 2 (1) (f), *ante*, and sec. 33 of the Metropolis Water Act, 1871, *post*, vol ii. tit. "*Water*."

(*g*) **Complaint** must be made within six months after default (*Reg.* v. *Slade, Ex parte Saunders* (No. 2), *infra*; *Hammersmith Vestry* v. *Lowenfeld*, *post*, p. 287); and proceedings must be taken as provided by sec. 117, *post*. Instead of a complaint being made to a petty sessional court, proceedings may, at the discretion of the sanitary authority, be taken in the High Court. Sec. 13, *post*. The sanitary authority may appear by their clerk, or any officer or member duly authorised. Sec. 123, *post*.

(*h*) **Petty sessional court** means a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court house, and includes the Lord Mayor of the City of London, and any alderman of that City, and any metropolitan or borough police magistrate, or other stipendiary magistrate, when sitting in a court house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 13 (12).

(*i*) **Nuisance order.** For form of order see form C., sched. 3, *post*. Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), it was held that a nuisance order is an order made by justices in a criminal matter within the meaning of the Judicature Act, 1873 (36 & 37 Vict. c. 66), sec. 47, and that no appeal lies to the Court of Appeal from a decision of the Queen's Bench Division with regard to it. *Reg.* v. *Whitehurch*, 7 Q. B. D. 534; 50 L. J. M. C. 99; *Ex parte Schofield* (1891), 2 Q. B. 428; 60 L. J. M. C. 157. Being an order in a criminal matter, the High Court has no jurisdiction to grant costs to the prosecutor where a rule *nisi* for a writ of *certiorari* to quash it is made absolute. *Reg.* v. *Parlby*, W. N. (1889), 190.

An appeal to quarter sessions lies against a nuisance order, but only when it includes a prohibition or closing order, or requires the execution of structural works. Secs. 6 (2) and 125, *post*.

54 & 55 Vict. c. 76.

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified (*k*) in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance.

(5) An abatement order or prohibition order shall, if the person on whom the order is made so requires, or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.

(6) A closing order may prohibit a dwelling-house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the court that by reason of a nuisance a dwelling-house is unfit for human habitation, and if such proof is given the court shall make a closing order, and may impose a fine not exceeding twenty pounds.

(8) A petty sessional court, when satisfied that the dwelling-house has been rendered fit for human habitation, may declare that it is so satisfied and cancel the closing order.

(9) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he shall, unless he satisfies the court that he has used all due diligence (*l*) to carry out such order, be liable to a fine not exceeding twenty shillings a day during his default; and if a person knowingly and wilfully acts contrary to a prohibition or closing order he shall be liable to a fine not exceeding forty shillings a day during such contrary action (*m*); moreover the sanitary authority may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

Provision as to appeal against order.

6.—(1) Where a person appeals to the court of quarter sessions against a nuisance order, no liability to a fine shall arise, nor, save as in this section mentioned, shall any proceedings be taken or work done under such order until after the determination or abandonment of such appeal.

(*k*) **Within a time specified.** See note (*z*) to sec. 4 (1), *ante*.

(*l*) **All due diligence.** See *Parker* v. *Inge*, *ante*, p. 282.

(*m*) **Fine.** See secs. 11 and 117, *post*, as to the recovery of fines. The limit of six months within which complaint must be made under the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), applies to proceedings under this sub-section, and therefore a conviction which imposed a fine in respect of every day during a period exceeding six months is bad. *Reg.* v. *Slade, Ex parte Saunders* (No. 2) (1895), 2 Q. B. 247; 64 L. J. M. C. 232. A conviction which imposed a fine and imprisonment, with hard labour in default of distress, was quashed by the High Court, the defendant having paid the fine without appealing to quarter sessions. *Reg.* v. *Slade, Ex parte Saunders* (No. 1), 59 J. P. 279. But where, on a conviction in the same form, the defendant appealed to quarter sessions without paying the fine, and the quarter sessions, on evidence that the mention of hard labour was due to an oversight on the part of the magistrates' clerk, amended the conviction under the Quarter Sessions Act, 1849 (12 & 13 Vict. c. 45), sec. 7; the High Court affirmed the conviction as amended. *Ib.* See also *Reg.* v. *Kerswill* (1895), 1 Q. B. 1; 64 L. J. M. C. 70.

A fresh summons must be issued to the defendant for disobedience to the nuisance order before the fine can be inflicted. *Reg.* v. *Jenkins*, 3 B. & S. 116; 32 L. J. M. C. 1. An order under the repealed Nuisances Removal Act, 1855 (18 & 19 Vict. c. 12), upon an owner to abate a nuisance, and in his default upon the local authority, was held not to relieve the owner of his liability to be fined, on the failure of the local authority to do the work. *Tomlins* v. *Great Stanmore Nuisances Removal Committee*, 29 J. P. 117; 12 L. T. (N. S.) 118. Under the same Act, where an abatement order was made, and, on a recurrence of the nuisance, an order was made prohibiting its recurrence, and two informations were subsequently laid in respect of each order, both informations being founded on the same Act, it was held that there could only be one conviction. *Eddleston* v. *Barnes*, 1 Ex. D. 67; 45 L. J. M. C. 73.

(2) There shall be no appeal to quarter sessions against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works (*n*). 54 & 55 Vict. c. 76.

(3) Where a nuisance order is made and a person does not comply with it and appeals against it to the court of quarter sessions, and such appeal is dismissed or is abandoned, the appellant shall be liable to a fine not exceeding twenty shillings a day during the non-compliance with the order (*o*), unless he satisfies the court before whom proceedings are taken for imposing a fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay, and where the appeal is heard by the court of quarter sessions, that court may, on dismissing the appeal, impose the fine as if the court were a petty sessional court.

(4) Where a nuisance order is made on any person and appealed against, and the court which made the order is of opinion that the continuance of the nuisance will be injurious or dangerous to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the court may authorise the sanitary authority immediately to abate the nuisance; but the sanitary authority, if they do so, and the appeal is successful, shall pay the cost of such abatement and the damages (*p*) (if any) sustained by the said person by reason of such abatement; but, if the appeal is dismissed or abandoned, the sanitary authority may recover the cost of the abatement in a summary manner (*q*) from the said person.

Provision in case of two convictions for overcrowding.

7. Where two convictions for offences relating to the overcrowding of a house or part of a house in any district have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court (*r*) may, on the application of the sanitary authority, order the house to be closed for such period as the court may deem necessary.

In certain cases order may be addressed to sanitary authority.

8. Whenever it appears to the satisfaction of the petty sessional court that the person by whose act, default, or sufferance, a nuisance liable to be dealt with summarily under this Act (*s*) arises or the owner (*t*) or occupier of the premises is not known or cannot be found, then the nuisance order may be addressed to, and if so addressed shall be executed by, the sanitary authority (*u*).

Power to sell manure, &c.

9. Any matter or thing removed by the sanitary authority in abating, or

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(*n*) **Structural works.** Where a nuisance arising from open drains could only be remedied by the construction of a covered drain, an order to "abate and discontinue the nuisance" and to do "such works and acts as are necessary to abate the same," was held to be an order to abate merely, and not an order for structural works so as to be subject to appeal under the repealed Nuisances Removal Act, 1855 (18 & 19 Vict. c. 12). *Liverpool, Ex parte Mayor, &c., of*, 8 E. & B. 537; 27 L. J. M. C. 89.

(*o*) **Fine.** See note (*m*) on page 284.

(*p*) **Damages.** No provision is made in this Act for the recovery of these damages, which can only therefore be recovered by action.

(*q*) **Summary manner.** See sec. 117, *post*.

(*r*) **Petty sessional court.** See note (*h*) on page 283.

(*s*) **Nuisance liable to be dealt with summarily.** See sec. 2, *ante*, and secs. 22 (2) and 24, *post*.

(*t*) **Owner** is defined by sec. 141, *post*.

(*u*) **Executed by sanitary authority.** As to the circumstances under which sanitary authorities may abate a nuisance without an order, see sec. 4 (3) (b), *ante*; or pending appeal, when a nuisance order has been made on any person, see sec. 6 (4), *ante*.

54 & 55 Vict. c. 76.

doing what is necessary to prevent the recurrence of, a nuisance liable to be dealt with summarily under this Act (*x*) may be sold by public auction or, if the authority think the circumstances of the case require it, may be sold otherwise, or be disposed of without sale; and the money arising from the sale may be retained by the sanitary authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing.

Power of entry.

10. The sanitary authority shall have a right to enter from time to time any premises (*y*)—

(a) for the purpose of examining as to the existence thereon of any nuisance liable to be dealt with summarily under this Act (*x*), at any hour by day (*z*), or in the case of a nuisance arising in respect of any business, then at any hour when that business is in progress or is usually carried on, and

(b) where under this Act a nuisance has been ascertained to exist, or a nuisance order has been made, then at any such hour as aforesaid, until the nuisance is abated, or the works ordered to be done are completed, or the closing order is cancelled, as the case may be, and

(c) where a nuisance order has not been complied with, or has been infringed, at all reasonable hours (*a*), including all hours during which business therein is in progress or is usually carried on, for the purpose of executing the order.

Costs of execution of provisions relating to nuisances.

11.—(1) All reasonable costs and expenses incurred in serving notice, making a complaint, or obtaining a nuisance order, or in carrying the order into effect, shall be deemed to be money paid for the use and at the request (*b*) of the person on whom the order is made; or if the order is made on the sanitary authority, or, if no order is made, but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default, or sufferance (*c*), the nuisance was caused; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises (*d*).

(2) Such costs and expenses, and any fines incurred in relation to any

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(*x*) **Nuisance liable to be dealt with summarily.** See note (*h*) on page 287.

(*y*) **Right to enter.** See sec. 115, *post*, for general provisions as to powers of entry, and penalty for refusing or failing to admit.

(*z*) **By day,** i.e., from 6 a.m. to 9 p.m. Sec. 141, *post*.

(*a*) **Reasonable hours.** Sunday was held to be not necessarily an unreasonable time under the repealed Nuisances Removal Amend. Act, 1863 (26 & 27 Vict. c. 117), sec. 2. *Small* v. *Bickley*, 39 J. P. 422; 32 L. T. (N. S.) 726.

(*b*) **For the use and at the request.** Where a notice to abate a nuisance was served on the occupier of premises by a sanitary authority under sec. 4 (1), *ante*, and in executing the work it was discovered that the nuisance arose from a structural defect in the drain, the occupier was held to be entitled to recover from the owner the costs incurred in abating the nuisance, as "money paid for the use and at the request" of the owner, although no notice under sec. 4 (3), *ante*, had been served on the latter, and no "nuisance order" had been made under sec. 5, *ante*. *Gebhardt* v. *Saunders* (1892), 2 Q. B. 452; 56 J. P. 741.

(*c*) **Person by whose act, default, &c.** See note (*x*) to sec. 4 (1), *ante*.

(*d*) **Person being owner.** Or from the person for the time being occupier, who may deduct the amount recovered from his rent. Sec. 121, *post*. As to recovery of expenses from "any future owner," see note (*s*) [Met. Man. Act. 1862, sec. 77], *ante*, p. 257. For penalty for refusing to disclose, or wilfully misstating the owner's name and address, see sec. 116 (3), *post*.

such nuisance, may be recovered in a summary manner (*e*) or in the county court or High Court (*f*), and the court shall have power to divide costs (*g*), expenses, and fines between persons by whose acts, defaults, or sufferance a nuisance is caused, as to it may seem just. 54 & 55 Vict. c. 76.

Power of individual to complain to justice of nuisance.

12.—(1) Complaint of the existence of a nuisance liable to be dealt with summarily under this Act (*h*) on any premises within the district of any sanitary authority may be made by any person (*i*), and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, fines for disobedience of orders, appeal, and otherwise, as in the case of a like complaint by the sanitary authority (*k*).

(2) Provided that the court may, if it thinks fit,—

(a) adjourn the hearing or further hearing of the complaint for the purpose of having an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for that purpose ; and

(b) authorise any constable or other person to do all necessary acts for executing an order made on a complaint under this section, and to recover the expenses from the person on whom the order is made in a summary manner.

(3) Any constable or other person authorised under this section shall have the like powers, and be subject to the like restrictions as if he were an officer of the sanitary authority authorised under the foregoing provisions of this Act to enter any premises (*l*) and do any acts thereon.

Proceedings in High Court for abatement of nuisances.

13. The sanitary authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in the High Court (*m*) to enforce the abatement or

(*e*) **Summary manner.** See sec. 117, *post*.

(*f*) **County court or High Court.** Any action to recover such costs or expenses must be commenced within six months from the time when they are incurred. *Hammersmith Vestry* v. *Lowenfeld* (1896), 2 Q. B. 278 ; 65 L. J. Q. B. 662. An action cannot be commenced in the county court to recover costs and expenses incurred before a magistrate, in proceedings to obtain a nuisance order, until the magistrate has assessed such costs and expenses. *Ib.* See also note to sec. 63 of the Met. Man. Amend. Act, 1862, *ante*. Under a corresponding provision of the repealed Nuisances Removal Act, 1848 (11 & 12 Vict. c. 123), sec. 3, it was held that a county court or two justices had jurisdiction, although the title to the land on which the nuisance existed came into issue. *Reg.* v. *Harden*, 2 E. & B. 188 ; 22 L. J. Q. B. 299 ; *Hertford Union (Guardians of)* v. *Kempton*, 11 Ex. 295 ; 25 L. J. M. C. 41.

(*g*) **Divide costs.** Where proceedings are taken against some only of the persons by whose act or default any nuisance has been caused, they are entitled to recover a proportionate part of the costs from the others who were not proceeded against. Sec. 120, *post*.

(*h*) **Nuisance liable to be dealt with summarily.** See sec. 2, *ante*, and secs. 22 (2) and 24, *post*.

(*i*) **Complaint by individual.** Under the Nuisances Removal Acts, 1855 and 1860 (18 & 19 Vict. c. 121, and 23 & 24 Vict. c. 77), and the Sanitary Act, 1866 (29 & 30 Vict. c. 90), it was held that the notice to the person in default required from a sanitary authority previous to complaint to a petty sessional court (required now by sec. 4, *ante*), was not necessary before laying a complaint by an inhabitant. *Cocker* v. *Cardwell*, L. R. 5 Q. B. 15 ; 39 L. J. M. C. 28.

(*k*) **Like proceedings.** See sec. 5. *ante*.

(*l*) **Enter premises.** See sec. 10, *ante*, and sec. 115, *post*, as to the powers of sanitary authorities to enter premises. As to entering underground rooms, see sec. 97, *post*.

(*m*) **Proceedings in High Court.** Under corresponding provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55). sec. 107, it was held that the proceedings must be ordinary proceedings known to the law, and that, in the absence of special damage, a local authority cannot sue in respect of a public nuisance, except by action in the nature of an information, with the sanction of the Attorney-General. *Tottenham Urb.*

54 & 55 Vict. c. 76.

prohibition of any nuisance liable to be dealt with summarily under this Act, or for the recovery of any fines from, or for the punishment of, any persons offending against the provisions of this Act relating to such nuisances, and may pay as expenses of the execution of this Act their expenses of and incident to all such proceedings.

Power to proceed where cause of nuisance arises without district.

14.—(1) Where a nuisance liable to be dealt with summarily under this Act (*n*) appears to be wholly or partially caused by some act, default, or sufferance committed or taking place without the district the inhabitants of which are affected by the nuisance, the sanitary authority for that district may take or cause to be taken against any person in respect of such act, default, or sufferance any proceedings in relation to nuisances by this Act authorised (*o*), with the same incidents and consequences as if such act, default, or sufferance were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act, default, or sufferance is alleged to be committed or take place.

38 & 39 Vict. c. 55.

(2) Section one hundred and eight of the Public Health Act, 1875, set out in the first schedule to this Act, shall continue to extend to London, with the substitution of a sanitary authority under this Act for any nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the Metropolis shall include a nuisance within the meaning of this Act.

Penalty for injuring closet, &c., so as to cause a nuisance.

15. If a person causes any drain, watercloset, earth closet, privy, or ashpit to be a nuisance or injurious or dangerous to health by wilfully destroying or damaging the same, or any water-supply, apparatus, pipe, or work connected therewith, or by otherwise wilfully stopping up, or wilfully interfering with, or improperly using the same, or any such water-supply, apparatus, pipe, or work, he shall be liable to a fine not exceeding five pounds.

Penalties in respect of particular Nuisances.

Byelaws by sanitary authority and county council as to cleansing streets and prevention of nuisances.

16.—(1) Every sanitary authority shall make byelaws (*p*)—

(a) for the prevention of nuisances arising from any snow, ice (*q*), salt, dust, ashes, rubbish, offal, carrion, fish, or filth, or other matter or thing in any street (*r*); and

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Dist. Comm. v. *Williamson* (1896), 2 Q. B. 353; 65 L. J. Q. B. 591. But a sanitary authority may act as relators in an action brought by the Attorney-General for the purpose of abating a nuisance, and may themselves maintain an action for damages for a nuisance affecting property of which they are the actual owners. *Attorney-General* v. *Logan* (1891), 2 Q. B. 100; 55 J. P. 615. See also *Att.-Gen.* v. *Tod-Heatly*, *post*, p. 301.

(*n*) **Nuisance liable to be dealt with summarily.** See note (*h*) on page 287.

(*o*) **Proceedings authorised.** See secs. 4, 5, and 13, *ante*. As to proceedings where the nuisance arises from offensive trades without the district of the sanitary authority, see sec. 21 (4) (5), *post*.

(*p*) **Byelaws.** All byelaws made under this Act must be made subject and according to the provisions of sec. 114, *post*. The byelaws made by the County Council do not extend to the City. Sec. 133 (b), *post*. The County Council has made byelaws relating to the matters referred to in sub-sec. (2) (a) and (b).

(*q*) **Snow, ice, &c.** It is the duty of every sanitary authority to collect and remove all snow, ice, and street refuse from the streets, including the footways. Secs. 29 and 141, *post*. Without express statutory authority or the authority of the road authorities, a tramway company has no right to cause a nuisance by removing snow from the tram line, scattering salt, and then heaping up the slush on to the sides of the streets. *Ogston* v. *Aberdeen District Tramways Co.* (1897), H. L. (Sc.) A. C. 111; 75 L. T. (N. S.) 633.

(*r*) **Street** is defined by sec. 141, *post*.

54 & 55 Vict. c. 76.

(b) for preventing nuisances arising from any offensive matter running out of any manufactory, brewery, slaughter-house, knackers' yard (*s*), butcher's or fishmonger's shop, or dunghill, into any uncovered place, whether or not surrounded by a wall or fence ; and

(c) for the prevention of the keeping of animals on any premises in such place or manner as to be a nuisance or injurious or dangerous to health (*t*) ; and

(d) as to the paving of yards and open spaces in connexion with dwelling-houses.

(2) The county council shall make byelaws (*u*)—

(a) for prescribing the times for the removal or carriage by road or water of any fœcal or offensive or noxious matter or liquid in or through London, and providing that the carriage or vessel used therefor shall be properly constructed and covered so as to prevent the escape of any such matter or liquid, and as to prevent any nuisance arising therefrom ; and

(b) as to the closing and filling up of cesspools and privies, and as to the removal and disposal of refuse, and as to the duties of the occupier of any premises in connexion with house refuse, so as to facilitate the removal of it by the scavengers of the sanitary authority.

(3) It shall be the duty of every sanitary authority to observe and enforce any byelaws made under this section.

(4) Except as otherwise provided by the byelaws, a constable may arrest without warrant and take before a justice any person whom he finds committing an offence (*x*) against such byelaws and who refuses to give his true name and address.

(5) Provided that the byelaws shall not make it an offence to lay sand or other material in any street in time of frost to prevent accidents, or litter or other matter to prevent the freezing of water in pipes, or in case

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(*s*) **Slaughter-house, knackers' yard.** See secs. 19—22 for provisions regulating these and other offensive trades.

(*t*) **Keeping animals.** A byelaw under the repealed Mun. Corp. Act, 1835 (5 & 6 Will. 4, c. 76), prohibiting the keeping of swine in a borough, was held to be bad. *Everett* v. *Grapes*, 25 J. P. 644 ; 3 L. T. (N. S.) 669. But a byelaw prohibiting the keeping of pigs within 100 feet from any dwelling-house, in an urban district, was held to be good. *Wanstead Loc. Bd.* v. *Wooster*, 37 J. P. 403 ; 38 J. P. 21. Though in a rural district a byelaw which prohibited the keeping of swine within 50 feet of any dwelling-house was held to be unreasonable and bad. *Heap* v. *Burnley Union*, 12 Q. B. D. 617; 53 L. J. M. C. 76. Where, pursuant to the repealed Loc. Govt. Act, 1858 (21 & 22 Vict. c. 43), a local board made a byelaw as to manure, &c., it was held that it was not necessary to prove that the disobedience to it caused a nuisance, in order to procure a conviction. *Tong Street Loc. Bd.* v. *Seed*, 39 J. P. 278. Where a pig dealer, in an urban district, on receiving orders for the sale of pigs, used to bring the pigs to within fifty yards of a dwelling house in the morning, and keep them there without feeding them till the evening, when they were sent away, it was held that he had committed a breach of a byelaw made under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 44, prohibiting the keeping of swine within fifty yards of a dwelling-house. *Steers* v. *Manton*, 57 J. P. 584. See sec. 17, *post*, imposing restrictions on keeping swine ; and sec. 18, *post*, empowering petty sessional courts to prohibit the keeping of animals in unfit places. Cows can only be kept on premises licensed for the purpose by the County Council. Sec. 20 (1), *post*. Keeping any animal in such a place or manner as to be a nuisance, &c., is a nuisance which may be abated summarily. Sec. 2 (1) (c), *ante*.

(*u*) **Byelaws.** See note (*p*) on page 288.

(*x*) **Finds committing an offence.** Under the Vagrant Act, 1824 (5 Geo. 4, c. 83), sec. 3, it was held that a man who neglected to support his wife could not be said to be "found offending against the Act," so as to enable a constable to arrest him without a warrant. *Horley* v. *Rogers*, 29 L. J. M. C. 140 ; 24 J. P. 261.

54 & 55 Vict. c. 76.

of sickness to prevent noise, if the same is laid, and when the occasion ceases duly removed, in accordance with the byelaws.

Penalty for keeping swine in unfit place.

17.—(1) A person shall not—

(a) feed or keep any swine (*y*) in any locality, premises (*z*), or place which is unfit for the keeping of swine, or in which the feeding or keeping of swine may create a nuisance or be injurious to health, or

(b) permit any swine to stray or go about in any street or public place.

(2) If any person acts in contravention of this section he shall be liable to a fine not exceeding forty shillings, and to forfeit the swine, and to a further fine not exceeding ten shillings for every day during which he continues such offence after notice from the sanitary authority to discontinue the same.

(3) Any swine found straying or going about in any street or public place may be seized and removed by any constable.

(4) Any premises within forty yards of any street or public place shall be deemed for the purposes of this section to be a place unfit for keeping swine.

Power to prohibit keeping of animals in unfit place.

18. Where it is proved to the satisfaction of a petty sessional court (*a*) that any locality, premises (*z*), or place are or is unfit for the keeping of any animal, the court may by summary order prohibit the using thereof for that purpose for the future.

Offensive Trades (b).

Prohibition and regulation of establishing anew certain offensive businesses, and byelaws as to offensive businesses.

19.—(1) If any person—

(a) establishes anew the following businesses, or any of them; that is to say, the business of blood boiler, bone boiler (*c*), manure manufacturer, soap boiler, tallow melter, or knacker (*d*); or

(b) establishes anew, without the sanction of the county council, the following businesses, or any of them; that is to say, the business of fellmonger, tripe boiler, slaughterer of cattle or horses (*e*), or any

(*y*) **Keeping swine** in a city is an indictable nuisance at common law. "Where a new penalty is applied for a matter which at common law was an indictable offence, either remedy may be pursued; but where the statute makes the offence, that remedy must be taken which the statute gives." *Reg.* v. *Wigg*, 2 Salk. 460. Sec. 16 (1) (c), *ante*, empowers every sanitary authority to make byelaws for preventing the keeping of animals so as to be a nuisance, &c.; and see note (*t*) thereto.

(*z*) **Premises.** For definition of "premises," see sec. 141, *post*.

(*a*) **Petty sessional court.** See note (*h*) to sec. 5 (1), *ante*.

(*b*) **Offensive trades.** For further provisions regulating dangerous and noxious businesses, see the London Building Act, 1894, secs. 118—121, *post*. The erection of a small-pox hospital by a local authority, in the district of another local authority, was held, under similar provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 112, not to be the establishment of "any other noxious or offensive trade or business." *Withington Loc. Bd.* v. *Manchester Corporation* (1893), 2 Ch. 19; 62 L. J. Ch. 393.

(*c*) **Bone boiler.** A company, without leave of the sanitary authority, established a business of steaming bones by screwing them down in metal cylinders, hermetically sealed, and introducing dry steam, which stripped the bones and caused no offensive smell, no water being admitted to the cylinders. Held, that the offensive trade of bone-boiling was not proved to have been unlawfully established within the meaning of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 112. *Cardiff Manure Company* v. *Cardiff Union*, 54 J. P. 661.

(*d*) **Knacker** is defined in sec. 141, *post*.

(*e*) **Slaughterer of cattle or horses.** Defined by sec. 141, *post*. A cattle market company, cattle having never been slaughtered in the market before, erected a building in which they allowed persons to slaughter cattle on payment. Held, that they were liable under the Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), sec. 64, for having newly

other business which the county council may declare by order confirmed by the Local Government Board and published in the London Gazette to be an offensive business, 54 & 55 Vict. c. 76.

he shall be liable to a fine not exceeding fifty pounds in respect of the establishment thereof, and any person carrying on the same when established shall be liable to a fine not exceeding fifty pounds for every day during which he so carries on the same:

(2) Provided that this enactment shall not render any person liable to a fine for establishing anew with the sanction of the county council, or carrying on, the business of soap boiler, if and as long as that business is a business in which tallow or any animal fat or oil other than olein is not used by admixture with alkali for the production of soap.

(3) The county council shall give their sanction by order, but, at least fourteen days before (*f*) making any such order, shall make public the application for it, by serving on the sanitary authority within whose district the premises on which the business is proposed to be established are situate, and by advertising, notice of the application and of the time and place at which they will be willing to hear all persons objecting to the order, and by causing a copy of the notice to be affixed in a conspicuous part of the said premises; and they shall consider any objections made at that time and place, and shall grant or withhold their sanction as they think expedient.

(4) The county council may make byelaws for regulating the conduct of any businesses specified in this section, which are for the time being lawfully carried on in London, and the structure of the premises on which any such business is being carried on, and the mode in which the said application is to be made (*g*).

(5) Any such byelaw may empower a petty sessional court by summary order to deprive any person, either temporarily or permanently, of the right of carrying on any business to which such byelaw relates, as a punishment for breaking the same, and any person disobeying such order shall be liable to a fine not exceeding fifty pounds for every day during which such disobedience continues.

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established the business of slaughterer of cattle, &c. *Liverpool Cattle Market Co.* v. *Hodson*, L. R. 2 Q. B. 131; 36 L. J. M. C. 30. An owner of premises, which for many years had been used as a slaughter-house, discontinued for a considerable period to slaughter there, but used the premises for pining cattle preparatory to slaughter. He subsequently again began to slaughter cattle there, and it was held that the premises had never ceased to be used as a slaughter-house. *Hides* v. *Littlejohn*, 74 L. T. (N. S.) 24.

(*f*) **At least fourteen days before.** This means fourteen clear days, exclusive of the day of giving the notice and the day of making the order. *Reg.* v. *Shropshire JJ.*, 8 A. & E. 173; *Young* v. *Higgon*, 6 M. & W. 49; *Reg.* v. *Middlesex JJ.*, 3 D. & L. 109; 14 L. J. M. C. 139; *Howes* v. *Turner*, 1 C. P. D. 670; 45 L. J. C. P. 550; *Railway Sleepers Supply Co., In re*, 29 Ch. D. 204; 54 L. J. Ch. 72.

(*g*) **Byelaws.** See sec. 114, *post*, for provisions regulating the making of byelaws. The County Council has not made any byelaws under this section, but byelaws made under the repealed Slaughter-houses, &c. (Metropolis) Act, 1874, are still in force, regulating the following businesses, viz.:—Animal Charcoal Manufacturer, Blood Boiler, Bone Boiler, Manure Manufacturer, Soap Boiler or Tallow Melter, Blood Drier, Cat Gut Maker or Manufacturer, Fat Melter or Fat Extractor, Glue and Size Manufacturer, Gut Scraper, Knacker, Slaughterer of Cattle, and Tripe Boiler. See sec. 142 (2) (b), *post*. Where a servant, in direct disobedience to the orders of his employer, and in the latter's absence, slaughtered a sheep in the pound in view of other sheep contrary to the byelaws, it was held that the employer was liable to conviction. *Collman* v. *Mills* (1897), 1 Q. B. 396; 66 L. J. Q. B. 170.

54 & 55 Vict. c. 76.

(6) Any sanitary authority or person aggrieved by any proposed byelaw under this section, or by any proposed alteration or repeal of a byelaw, may forward notice of his objection to the Local Government Board, who shall consider the same.

(7) There shall be charged for an order of the county council under this section, and carried to the county fund, such fee not exceeding forty shillings as the county council may fix.

(8) For the purposes of this section a business shall be deemed to be established anew not only if it is established newly, but also if it is removed from any one set of premises to any other premises, or if it is renewed on the same set of premises after having been discontinued for a period of nine months or upwards, or if any premises on which it is for the time being carried on are enlarged without the sanction of the county council; but a business shall not be deemed to be established anew on any premises by reason only that the ownership of such premises is wholly or partially changed, or that the building in which it is established having been wholly or partially pulled down or burnt down has been reconstructed without any extension of its area.

(9) Nothing in this section shall render an order of the county council necessary to authorise the slaughter of cattle at the Metropolitan Cattle Market, or at the cattle market at Deptford, or shall authorise the making of byelaws affecting either of those markets or the slaughter-houses erected thereat either before or after the commencement of this Act.

(10) In the application of this section to the City of London, the commissioners of sewers shall be substituted for the county council, and the consolidated rate for the county fund.

Licensing of cow-houses and slaughter-houses.

20.—(1) A person carrying on the business of a slaughterer of cattle or horses, knacker, or dairyman (*h*), shall not use any premises in London (outside the City of London) as a slaughter-house, or knacker's yard, or a cow-house or place for the keeping of cows, without a licence from the county council, and if he does he shall for each offence be liable to a fine not exceeding five pounds, and the fact that cattle (*i*) have been taken into unlicensed premises shall be primâ facie evidence that an offence under this section has been committed.

(2) A licence under this section shall expire on such day in every year as the county council fix, and when a licence is first granted shall expire on the day so fixed which secondly occurs after the grant of the licence, and a fee not exceeding five shillings to be carried to the county fund may be charged for the licence.

(3) Not less than fourteen days before (*j*) a licence for any premises is granted or renewed under this section, notice of the intention to apply for it shall be served on the sanitary authority of the district in which the premises are situate (*k*), and that sanitary authority, if they think fit, may show cause against the grant or renewal of the licence.

(*h*) **Dairyman.** See the definition of this expression in sec. 141, and *Umfreville* v. *London Coun. Counc.*, cited in note thereto, *post*. See also the Dairies, Cowsheds, and Milkshops Order of 1885, art. 6 (6), *post*, p. 370.

(*i*) **Cattle** includes sheep, goats, and swine. Sec. 141, *post*.

(*j*) **Not less than fourteen days before,** i.e., clear days, exclusive of the day of serving the notice and the day of granting the licence. *Railway Sleepers Supply Co., In re*, *ante*, p. 291.

(*k*) **Notice.** This must be in writing (sec. 127, *post*), and may be served in manner provided by sec. 128, *post*.

(4) An objection shall not be entertained to the renewal of a licence under this section, unless seven days previous notice of the objection has been served on the applicant (*l*), save that, on an objection being made of which notice has not been given, the county council may, if they think it just so to do, direct notice thereof to be served on the applicant, and adjourn the question of the renewal to a future day, and require the attendance of the applicant on that day, and then hear the case, and consider the objection, as if the said notice had been duly given. 54 & 55 Vict. c. 76.

(5) Where a committee of the county council determine to refuse, or to recommend the council to refuse, the renewal of any licence under this section, the county council shall, on written application made within seven days after (*m*) such determination is made known to the applicant, hear the applicant against such refusal.

(6) For the purposes of this section a licence shall be deemed to be renewed where a further licence is granted in immediate succession to a prior licence for the same premises.

(7) The sanitary authority shall have a right to enter (*n*) any slaughter-house or knacker's yard at any hour by day (*o*) or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any byelaw made thereunder.

(8) Nothing in this section shall extend to slaughter-houses erected before or after the commencement of this Act in the Metropolitan Cattle Market under the authority of the Metropolitan Market Act, 1851, or the Metropolitan Market Act, 1857 (*p*).

Duty of sanitary authority to complain to justice of nuisance arising from offensive trade.

21.—(1) Where any manufactory, building, or premises (*q*) used for any trade, business, process, or manufacture, causing effluvia, is certified to the sanitary authority by their medical officer of health, or by any two legally qualified medical practitioners (*r*), or by any ten inhabitants of the district of such authority, to be a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, such authority shall make a complaint (*s*), and if it appears to the petty sessional court hearing the complaint that the trade, business, process, or manufacture carried on by the person complained of is a nuisance, or causes any effluvia which is a nuisance or injurious or dangerous to the health of any of the inhabitants of the district, then, unless it is shown that such person has used the best practicable means for abating the nuisance, or preventing or counteracting the effluvia, the person so offending (being the owner or

(*l*) **Notice.** See note (*k*) on page 292.

(*m*) **Within seven days after.** See note to sec. 211 of the Met. Man. Act. 1855, *ante*, as to the mode of computing these days.

(*n*) **Right to enter.** See sec. 115, *post*.

(*o*) **By day,** i.e., from 6 a.m. to 9 p.m. Sec. 141, *post*.

(*p*) **The Metropolitan Market Act, 1857** (20 & 21 Vict. ch. cxxxv.). repealed and replaced the Metropolitan Market Act, 1851 (14 & 15 Vict. c. 61). Under it the Common Council of the City is authorised to provide and maintain a cattle market, and a meat market together with slaughter-houses, stalls, shops, &c.

(*q*) **"Building" and "premises"** are defined by sec. 141, *post*.

(*r*) **Legally qualified medical practitioners,** i.e., persons registered under the Medical Act, 1858 (21 & 22 Vict. c. 90), sec. 34 ; or, if colonials or foreigners, under the Medical Act, 1886 (49 & 50 Vict. c. 48), sec. 14.

(*s*) **Complaint.** It is not necessary for the sanitary authority to serve on the person causing the nuisance a notice under sec. 4, *ante*, requiring its abatement, before taking proceedings under this section. *Bird* v. *St. Mary Abbott's, Kensington* (1895), 1 Q. B. 912 ; 64 L. J. M. C. 215.

54 & 55 Vict. c. 76.

occupier of the premises, or being a foreman or other person employed by such owner or occupier) (*t*) shall be liable to a fine not exceeding fifty pounds.

(2) Provided that the court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the court may deem practicable, and order to be carried into effect, for abating the nuisance, or mitigating or preventing the injurious effects of the effluvia.

(3) The sanitary authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in the High Court (*u*) against any person in respect of the matters alleged in such certificate.

(4) The sanitary authority may take proceedings under this section in respect of a manufactory, building (*x*), or premises (*z*) situate without their district, so, however, that the summary proceedings shall be had before a court having jurisdiction in the district where the manufactory, building, or premises are situate.

38 & 39 Vict. c. 55.

(5) Section one hundred and fifteen of the Public Health Act, 1875 (set out in the first schedule to this Act), shall continue to extend to London, with the substitution of a sanitary authority under this Act for a nuisance authority mentioned in the said section, and any reference in that section to a nuisance in the Metropolis or to any building, manufactory, or place in the Metropolis which is injurious to health, shall include any nuisance within the meaning of this Act, and any manufactory, building, or place which is dangerous to health.

Provision as to nuisance created by sanitary authority in dealing with refuse.

22. (1) The removal of house refuse and street refuse (*y*) by a sanitary authority when collected or deposited by that authority shall be deemed to be a business carried on by that authority within the meaning of the last preceding section, and a complaint or proceedings under that section in relation to any such business may be made or taken by the county council in like manner as if the council were a sanitary authority.

(2) Any premises (*z*) used by a sanitary authority for the treatment or disposal of any street refuse or house refuse, as distinct from the removal thereof, which are a nuisance or injurious or dangerous to health, shall be a nuisance liable to be dealt with summarily (*a*) under this Act, and for the purpose of the application thereto of the provisions of this Act relating to such nuisances the county council shall be deemed to be a sanitary authority.

Smoke Consumption.

Furnaces and steam vessels to consume their own smoke.

23. (1) Every furnace employed in the working of engines by steam, and every furnace employed in any public bath or washhouse, or in any mill, factory, printing house, dyehouse, iron foundry, glasshouse, distillery, brewhouse, sugar refinery, bakehouse, gasworks, waterworks (*b*),

(*t*) **Owner . . . foreman.** "Owner" is defined by sec. 141, *post*. As to the liability of the owner for the neglect of his servant, see note to sec. 23 (2), *post*.

(*u*) **Proceedings in High Court.** See note to sec. 13, *ante*.

(*x*) **Building** is defined by sec. 141, *post*.

(*y*) **"House refuse" and "street refuse"** are defined by sec. 141, *post*. It is the duty of the sanitary authority to remove such refuse. Secs. 29 and 30, *post*.

(*z*) **Premises.** This expression is defined by sec. 141, *post*.

(*a*) **Liable to be dealt with summarily.** See secs. 3, 4, 5, 6, and 12, *ante*.

(*b*) **Waterworks.** See also the Metropolis Water Act, 1852, sec. 14, *post*, vol. ii. tit. "*Water*."

or other buildings used for the purpose of trade or manufacture (although a steam engine be not used or employed therein), shall be constructed so as to consume or burn the smoke arising from such furnace. 54 & 55 Vict. c. 76.

(2) If any person being the owner or occupier of the premises, or being a foreman or other person employed (*c*) by such owner or occupier—

(a) uses any such furnace which is not constructed so as to consume or burn the smoke arising therefrom ; or

(b) so negligently uses any such furnace as that the smoke arising therefrom is not effectually consumed or burnt ; or

(c) carries on any trade or business which occasions any noxious or offensive effluvia, or otherwise annoys the neighbourhood or inhabitants (*d*) without using the best practicable means for preventing or counteracting such effluvia or other annoyance ;

such person shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on each subsequent conviction to a fine double the amount of the fine imposed on the last preceding conviction.

(3) Every steam engine and furnace used in the working of any steam vessel (*e*) on the River Thames, either above London Bridge, or plying to and fro between London Bridge and any place on the River Thames westward of the Nore light (*f*) shall be constructed so as to consume or burn the smoke arising from such engine and furnace ; and if any such steam engine or furnace is not so constructed, or being so constructed is wilfully or negligently used so that the smoke arising therefrom is not effectually consumed or burnt, the owner or master of such vessel shall be liable to a fine not exceeding five pounds, and on a second conviction to a fine of ten pounds, and on every subsequent conviction to a fine of double the amount of the fine imposed on the last preceding conviction.

(4) Provided that in this section the words "consume or burn the smoke" shall not be held in all cases to mean "consume or burn all the smoke," and the court hearing an information against a person may remit the fine if of opinion that such person has so constructed his furnace as to consume or burn, as far as possible (*g*) all the smoke arising from such

(*c*) **Person employed.** For definition of "owner," see sec. 141, *post*. A furnace was constructed to consume its own smoke, but, through the carelessness of the stoker, did not do so. Held, that the owner and occupier was not criminally responsible for the negligence of his servant, and could not be convicted under the corresponding provision of the Smoke Nuisance Abatement (Metropolis) Act, 1853 (16 & 17 Vict. c. 128), sec. 1. *Chisholm* v. *Doulton*, 22 Q. B. D. 736 ; 58 L. J. M. C. 133. Under a similar provision in a local Act, it was held that an owner who used properly constructed furnaces, and employed a competent person to attend to them, was not liable for the act of his servant, who, without his knowledge, negligently used them so that the smoke was not consumed, and that the servant was liable. *Willcock* v. *Sands*, 32 J. P. 565. Compare this section with sec. 24, *post*, and see notes thereto.

(*d*) **Offensive trades.** See secs. 19 *et seq.*, *ante*.

(*e*) **Vessel** includes a boat and every description of vessel used in navigation, sec. 141, *post*.

(*f*) **Westward of the Nore.** Under the repealed Smoke Nuisance Abatement (Metropolis) Amend. Act, 1856 (19 & 20 Vict. c. 107), sec. 1, it was held that a steam tug, employed exclusively in towing ships for hire to and from the docks, occasionally from and to places to the eastward, but generally from and to places to the westward of the Nore Light, was, while employed on any portion of the river to the westward of the Nore, liable to penalties for not consuming its own smoke. *Walker* v. *Evans*, 2 E. & E. 356 ; 29 L. J. M. C. 22.

(*g*) **As far as possible.** Under a local Act requiring every furnace to consume "as far as possible" its smoke, it was held that "as far as possible" meant as far as possible consistently with carrying on the trade in which the furnace was employed. *Cooper* v. *Woolley*, L. R. 2 Ex. 88 ; 36 L. J. M. C. 27.

54 & 55 Vict. c. 76.

furnace, and has carefully attended to the same, and consumed or burned, as far as possible, the smoke arising from such furnace.

(5) It shall be the duty of every sanitary authority to enforce the provisions of this section, and an information shall not be laid for the recovery of any fine under this section except under the direction of a sanitary authority.

(6) The provisions of this Act with respect to the admission of the sanitary authority into any premises for any purposes in relation to nuisances (*h*), and with respect to the giving of information of a nuisance (*i*), shall apply in like manner as if they were herein re-enacted, and in terms made applicable to this section.

(7) This section shall extend to the port of London, and as respects the port shall be enforced by the port sanitary authority (*k*).

(8) Nothing in this section shall alter or repeal any of the provisions of the City of London Sewers Act, 1851 (*l*), or of the Whitechapel Improvement Act, 1853 (*m*).

14 & 15 Vict. c. 75. 16 & 17 Vict. c. cxli.

Summary proceedings for abatement of nuisance caused by smoke.

24.—

(a) Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam (*n*), or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

(b) Any chimney (*o*) (not being the chimney of a private dwelling-house) (*p*), sending forth black smoke (*q*) in such quantity as to be a nuisance (*r*);

(*h*) **Admission of sanitary authority.** See sec. 10, *ante*, and secs. 115 and 116, *post*.

(*i*) **Giving information of a nuisance.** See sec. 3, *ante*.

(*k*) **Port of London; port sanitary authority.** See sec. 111, and note thereto, *post*.

(*l*) **City of London Sewers Act, 1851.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.

(*m*) **The Whitechapel Improvement Act, 1853.** vested in trustees the paving, lighting, and control of streets within the parish of St. Mary, Whitechapel.

(*n*) **Engines by steam.** Steam engines and furnaces used for the purpose of waterworks must be constructed on the most effectual principle for consuming their own smoke. Metropolis Water Act, 1852, secs. 14 and 16, *post*, vol. ii. tit. "*Water*." Railway companies are liable for the failure of their engines to consume their own smoke. Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), sec. 114; Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), sec. 19; *Smith* v. *Midland Rly. Co.*, 37 L. T. (N. S.) 224; 25 W. R. 861.

(*o*) **Any chimney.** Under the corresponding provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 91, where there were five separate chimneys, and the summons charged the proprietor with allowing black smoke to issue from "certain chimneys" on his premises, it was held that the justices were wrong in allowing an objection to the summons for not showing from which of the chimneys the smoke was alleged to issue, and that they ought to have heard the evidence and made their order as to one or more of the chimneys. *Barnes* v. *Norris*, 41 J. P. 150.

(*p*) **Chimney of dwelling-house.** The occupier of any house or building of which the chimney catches fire is liable to a penalty of 20*s*. Metropolitan Fire Brigade Act, 1865, sec. 23, *post*, vol. ii.

(*q*) **Sending forth black smoke.** The occupiers of certain premises persistently disregarded an order of the justices to cease to send forth black smoke from their chimney, and nineteen separate informations were laid against them under the Nuisances Removal Act, 1855 (18 & 19 Vict. c. 121), in respect of as many acts of disobedience, each committed on a different day, and the full penalty, with separate costs for each offence, was imposed. *Held*, that each daily emission of smoke was a separate act of disobedience for which a separate summons might be issued, and that the justices had not improperly exercised their discretion as to costs. *Reg.* v. *Waterhouse*, L. R. 7 Q. B. 545; 41 L. J. M. C. 115.

(*r*) **As to be a nuisance.** Under the Sanitary Act, 1866 (29 & 30 Vict. c. 90), sec. 19, it was held that it was not necessary, in order to abate a nuisance arising from

shall be nuisances liable to be dealt with summarily under this Act, and the provisions of this Act relating to those nuisances shall apply accordingly (*s*): 54 & 55 Vict. c. 76.

Provided that the court, hearing a complaint against a person in respect of a nuisance arising from a fireplace or furnace (*t*) which does not consume the smoke arising from the combustible used in such fireplace or furnace, shall hold that no nuisance is created, and dismiss the complaint, if satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable (*u*), having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof (*x*).

Workshops and Bakehouses.

Workshops and Bakehouses.

Limewashing and washing of workshops.

25.—(1) Where, on the certificate of a medical officer of health or sanitary inspector, it appears to any sanitary authority that the limewashing, cleansing, or purifying of any workshop (*y*) (other than a bakehouse), or of any part thereof, is necessary for the health of the persons employed therein, the sanitary authority shall serve notice in writing on the owner or occupier of the workshop to limewash, cleanse, or purify the workshop or part as the case requires, within the time specified (*z*) in the notice; and, if the person on whom notice is so served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding ten shillings for every day during which he continues to make default after conviction; and the sanitary authority may, if they think fit, cause the workshop or part to be limewashed, cleansed, or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person on whom the notice was served.

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smoke, to prove that the smoke was injurious to health. *Gaskell* v. *Bayley*, 38 J. P. 805; 30 L. T. (N. S.) 516.

Causing a nuisance by smoke or smells is an indictable offence at common law. *Rex* v. *White*, 1 Burr. 333; *Rex* v. *Dewsnap*, 16 East, 194. As to the abatement of such nuisances by injunction, see *Crump* v. *Lambert*, L. R. 3 Eq. 409; 17 L. T. (N. S.) 133; *Rapier* v. *London Tramways Co.* (1893), 2 Ch. 588; 63 L. J. Ch. 36.

(*s*) **Nuisances** liable to be dealt with *summarily*. See secs. 3—6 and 8—15, *ante*.

(*t*) **Fireplace or furnace.** A corresponding proviso in the Pub. Hlth. Act, 1875, sec. 91, was held to apply to fireplaces and furnaces (sub-sec. (a) of the present Act) only, and not to chimneys (sub-sec. (b) of the present Act), and that, therefore, where a trade chimney sends forth black smoke it is no defence to say that the furnace is well constructed and the best coal used. *Weekes* v. *King*, 49 J. P. 709; 53 L. T. (N. S.) 51.

(*u*) **As far as practicable.** See *Cooper* v. *Woolley*, *supra*, p. 295.

(*x*) **Carefully attended.** Under the corresponding provisions of the Nuisances Removal Acts, it was held that the owners were properly summoned as the persons by whose permission smoke issued from a chimney, and were responsible if the person causing the smoke to issue was their servant. *Barnes* v. *Akroyd*, L. R. 7 Q. B. 474; 41 L. J. M. C. 110. The language of sub-secs. (a) and (b) of the present section is identical in terms with sec. 91, sub-sec. 7, of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55). Under that section the defendant was summoned for allowing black smoke to issue from the chimney of his mill for more than ten minutes. The furnace was properly constructed, and an efficient fireman superintended, and the stoker's own negligence was the sole cause of the smoke. *Held*, that the defendant was liable. *Niven* v. *Greaves*, 54 J. P. 548.

Compare this section with the preceding section (23), and see *Chisholm* v. *Doulton*, cited in note thereto.

(*y*) **Workshop, factory, workplace.** See note to sec. 2 (1) (g), *ante*.

(*z*) **Time specified.** See *Thomas* v. *Nokes* (No. 2), *ante*, p. 282.

54 & 55 Vict. c. 76.

(2) This section shall apply to any factory (*a*) which is not subject to the provisions of the Factory and Workshop Act, 1878, and the Acts amending the same, and to any workplace (*a*), in like manner as it applies to a workshop.

Workshops and Bakehouses.

41 & 42 Vict. c. 16.

Enactments respecting bakehouses. 41 & 42 Vict. c. 16. 46 & 47 Vict. c. 53.

26.—(1) Sections thirty-four, thirty-five, and eighty-one of the Factory and Workshop Act, 1878, and sections fifteen and sixteen of the Factory and Workshop Act Amendment Act, 1883 (*b*) (which relate to cleanliness, ventilation, and other sanitary conditions), shall, as respects every bakehouse which is a workshop (*c*), be enforced by the sanitary authority of the district in which the bakehouse is situate, and they shall be the local authority within the meaning of those sections.

(2) For the purposes of this section, the provisions of this Act with respect to the admission of the sanitary authority (*d*) and their officers into any premises for any purpose in relation to nuisances shall apply in like manner as if they were herein re-enacted and in terms made applicable to this section; and every person refusing or failing to allow the sanitary authority or their officer to enter any premises in pursuance of those provisions for the purposes of this section shall be subject to a fine.

Notice to factory inspector respecting child or woman in workshop.

27.—If any child, young person, or woman (*e*) is employed in a workshop (*f*), and the medical officer of the sanitary authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district (*g*).

Dairies.

Dairies (h).

Orders and regulations for dairies.

28.—(1) The Local Government Board may make such general or special orders as they think fit for the following purposes, or any of them, that is to say,—

(a) for the registration with the county council of all persons carrying on the trade of dairymen (*i*);

(b) for the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies in the occupation of persons carrying on the trade of dairymen;

(*a*) **Workshop, factory, workplace.** See note to sec. 2 (1) (g), *ante*.

(*b*) **Factory and Workshops Acts, 1878 and 1883.** *Post*, vol. ii.

(*c*) **Bakehouse . . . workshop.** "Bakehouse" is defined by sec. 141, *post*. "Workshop" is defined by sec. 93 of the Factory and Workshop Act, 1878, *post*, vol. ii.

(*d*) **Admission of sanitary authority.** See sec. 10, *ante*, and secs. 115 and 116, *post*.

(*e*) **Child, young person, woman.** This Act gives no definition of these expressions. Presumably they have here the same meaning as is given to them by the Factory and Workshop Act, 1878, sec. 96, *post*, vol. ii.

(*f*) **Employed in a workshop.** As to when a child, young person, or woman is deemed to be employed in a workshop, see the Factory and Workshop Act, 1878, secs. 92 and 94, *post*, vol. ii.

(*g*) **Factory inspector for the district.** Inspectors of factories are appointed by the Home Secretary. The Factory and Workshop Act, 1878, sec. 78, *post*, vol. ii., requires, *inter alia*, a notice of the name and address of the prescribed inspector to be affixed at the entrance of factories and workshops.

(*h*) **Orders as to dairies.** Sec. 28 reproduces sec. 34 of the Contagious Diseases (Animals) Act, 1878, and sec. 9 of the Contagious Diseases (Animals) Act, 1886, which are repealed by sec. 142, *post*. Under those Acts the Dairies, Cowsheds, and Milkshops Orders of 1885 and 1886, *post*, p. 370, were issued, and as they have not been revoked or replaced by any subsequent order, they are still in force. Sec. 142 (2) (b), *post*.

(*i*) **Dairy, dairyman.** These expressions are defined by sec. 141, *post*; and see *Umfreville* v. *London Coun. Counc.*, cited in note thereto.

(c) for securing the cleanliness of milk vessels used for containing milk for sale by such persons ; 54 & 55 Vict. c. 76.

(d) for prescribing precautions to be taken for protecting milk against infection or contamination ; *Dairies.*

(e) for authorising the county council to make byelaws (*k*) for the purposes aforesaid, or any of them.

(2) The county council for the purpose of enforcing the said orders and any byelaws made thereunder shall have the same right to be admitted to any premises (*l*) as a sanitary authority have under this Act for the purpose of examining as to the existence of a nuisance liable to be dealt with summarily, and the provisions of this Act shall apply accordingly as if they were herein re-enacted and in terms made applicable to this section, and in particular with the substitution of the county council for the sanitary authority.

(3) The Local Government Board may by any such order impose the like fines for offences against orders made under this section as may be imposed for offences against the byelaws of a sanitary authority under this Act (*m*).

(4) In the application of this section to the City of London, the mayor, commonalty, and citizens of the City acting by the council shall be substituted for the county council, and their expenses in the execution of this section shall be paid out of the consolidated rate.

Removal of Refuse. *Removal of Refuse.*

29.—(1) It shall be the duty of every sanitary authority to keep the streets of their district, which are repairable by the inhabitants at large, including the footways, properly swept and cleansed so far as is reasonably practicable, and to collect and remove from the said streets, so far as is reasonably practicable, all street refuse (*n*). Duty of sanitary authority to clean streets.

(2) If any such street in the district of any sanitary authority, including the footway, is not properly swept and cleansed, or the street refuse is not collected and removed from any such street, so far as is reasonably practicable, as required by this section, the sanitary authority shall be liable to a fine not exceeding twenty pounds (*o*).

(3) So much of any Act as requires the occupier or owner of any premises in London to cause the footways and watercourses adjoining the premises to be swept and cleansed is hereby repealed.

30.—(1) It shall be the duty of every sanitary authority— Removal of house refuse.

(*k*) **Byelaws** of the County Council under this Act must be made in accordance with the provisions of sec. 114, *post*, and do not extend to the City. Sec. 133 (b), *post*. The byelaws dated July 3rd, 1885, made by the Met. Bd. Wks., under the Dairies, Cowsheds, and Milkshops Orders of 1885 and 1886, *post*, were still in force at the date of publication of the present work.

(*l*) **Right to be admitted.** See sec. 10, *ante*, and secs. 115 and 116, *post*.

(*m*) **Fines** for breach of byelaws, made by sanitary authorities under this Act, must not exceed 5*l*. for each offence, and 40*s*. for each day of its continuance after written notice from the sanitary authority. Sec. 114, *post*, and Pub. Hlth. Act, 1875, sec. 183, *post*, p. 358.

(*n*) **Street refuse** is defined by sec. 141, *post*. An action is not maintainable against a sanitary authority for special damage sustained through neglect of its duty to remove street refuse. *Saunders* v. *Holborn Dist. Bd.* (1895), 1 Q. B. 64 ; 61 L. J. Q. B. 101. See also *Ellis* v. *Strand Dist. Bd.*, *post*, p. 300.

(*o*) **Fine on sanitary authority.** Such fine is recovered and applied as provided by secs. 117 and 119, *post*. See also *Ellis* v. *Strand Dist. Bd.*, *post*, p. 300.

54 & 55 Vict. c. 76.

Removal of Refuse.

(a) to secure the due removal at proper periods of house refuse (*p*) from premises (*q*), and the due cleansing out and emptying at proper periods of ashpits (*q*), and of earth closets, privies and cesspools (if any), in their district, and the giving of sufficient notice of the times appointed for such removal, cleansing out, and emptying, and

(b) where house refuse is not removed from any premises in the district at the ordinary period, or any ashpit, earth closet, privy, or cesspool in or under any building in the district is not cleansed out or emptied at the ordinary period, and the occupier of the premises serves on the authority a written notice (*r*) requiring the removal of such refuse, or the cleansing out and emptying of the ashpit, earth closet, privy, or cesspool, as the case may be, to comply with such notice within forty-eight hours after that service, exclusive of Sundays and public holidays.

(2) If a sanitary authority fail without reasonable cause to comply with this section, they shall be liable to a fine not exceeding twenty pounds (*s*).

(3) If any person in the employ of the sanitary authority, or of any contractor with the sanitary authority, demands from an occupier or his servant any fee or gratuity for removing any house refuse from any premises, he shall be liable to a fine not exceeding twenty shillings.

Sanitary authority to appoint scavengers.

31. Every sanitary authority shall employ a sufficient number of scavengers, or contract with any scavengers (*t*), whether a company or individuals, for the execution of the duties of the sanitary authority under this Act with respect to the sweeping and cleansing of the several streets within their district, and the collection and removal of street refuse and house refuse, and the cleansing out and emptying of ashpits, earth closets, privies and cesspools.

Disposal of refuse.

32. All street refuse and house refuse collected by or on behalf of a sanitary authority shall be the property of that authority, and the authority shall have full power to sell and dispose (*u*) of the same for the

(*p*) **House refuse** is defined by sec. 141, *post*. Under the repealed provisions of sec. 125 of the Met. Man. Act, 1855, it was held that the guardians of a union were entitled to recover from a vestry the expense of removing ashes and rubbish from their workhouse, incurred by them in consequence of the neglect of the vestry to remove them. *Holborn Guardians* v. *St. Leonard, Shoreditch*, 2 Q. B. D. 145; 46 L. J. Q. B. 36. As to obstructing a sanitary authority in the removal of house refuse, see sec. 116, *post*, and *Borrow* v. *Howland*, cited in note thereto.

(*q*) **Premises; ashpit.** Defined by sec. 141, *post*.

(*r*) **Written notice.** See sec. 128 (2), *post*, as to service of notice.

(*s*) **Fine on sanitary authority.** See note (*o*) on page 299.

(*t*) **Contract with scavengers.** Under the Met. Man. Act, 1855, sec. 125 (repealed), it was held that the local authority was not liable in an action for damages arising from the scavengers' neglect to collect house refuse according to contract. *Ellis* v. *Strand Dist. Bd.*, 67 L. T. (N. S.) 307; 8 T. L. R. 739. See also *Saunders* v. *Holborn Dist. Bd.*, *ante*, p. 299.

(*u*) **Disposal of refuse.** "Notwithstanding anything in the principal Act, expenses incurred or to be incurred by a vestry or district board as sanitary authority for or in connection with the provision of land, wharves, destructors, plant, and equipment for the purposes of collection, removal, and disposal of house and street refuse, shall be and be deemed to have been expenses for the purposes of which a vestry or district board may borrow money as expenses incurred by them in the execution of the Metropolis Management Act, 1855. And secs. 183 to 191 (both included) of that Act shall apply and have effect accordingly." Pub. Hlth. (London) Act, 1891, Amendment Act, 1893 (56 & 57 Vict. c. 47).

purposes of this Act as they may think proper, and the person purchasing the same shall have full power to take, carry away, and dispose of the same for his own use, and the money arising from the sale thereof shall be applied toward defraying the expenses of the execution of this Act.

54 & 55 Vict. c. 76.

Removal of Refuse.

Owners, &c., to pay for removal of refuse of trades.

33.—(1) If the sanitary authority are required by the owner (*x*) or occupier of any premises to remove any trade refuse (*x*), that authority shall do so, and the owner or occupier shall pay to that authority a reasonable sum for such removal, and such sum, in case of dispute, shall be settled by the order of a petty sessional court.

(2) If any dispute or difference of opinion arises between the owner or occupier and the sanitary authority as to what is to be considered as trade refuse, a petty sessional court (*y*), on complaint made by either party, may by order determine whether the subject matter of dispute is or is not trade refuse, and the decision of that court shall be final (*z*).

Provision on neglect of scavenger to remove dust.

34.—(1) If the sanitary authority, or any persons employed by them, neglect for the space of seven days to remove all such house refuse as they are required by or in pursuance of this Act to remove (*a*), then an occupier of premises (after twenty-four hours' notice given by him to the sanitary authority requiring them to remove the same), may without prejudice to any other proceeding under this Act (*b*) give away or sell his house refuse; and any person who in pursuance of such gift or sale removes the said house refuse shall not be liable to any fine for so doing.

(2) Save as aforesaid, if any person other than the sanitary authority or their contractors or servants receives, carries away, or collects any house refuse or street refuse from any premises or street, such person shall be liable to a fine not exceeding five pounds.

Removal of filth on requisition of sanitary inspector

35.—(1) Where it appears to a sanitary inspector that any accumulation of any obnoxious matter, whether manure, dung, soil, filth, or other matter, ought to be removed, and it is not the duty of the sanitary authority to remove the same, he shall serve notice on the owner thereof, or on the occupier of the premises on which it exists, requiring him to remove the same (*c*), and if the notice is not complied with within forty-eight hours from the service thereof, exclusive of Sundays and public holidays, the matter referred to shall be the property of the sanitary authority, and be removed and disposed of by them, and the proceeds (if any) of such

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(*x*) **Owner; trade refuse.** Defined by sec. 141, *post*.

(*y*) **Petty sessional court.** See note (*h*) to sec. 5 (1), *ante*.

(*z*) **Decision final.** Under the repealed provisions of sec. 129 of the Met. Man. Act, 1855, it was held that the nature of the subject-matter is a question of fact, but whether the subject-matter comes within the words "trade refuse" involves a question of law; and that, therefore, notwithstanding the use of the words "final and conclusive" in that section, the magistrate was not entitled to refuse to state a case for the opinion of the High Court. *Reg.* v. *Bridge*, 24 Q. B. D. 609; 59 L. J. M. C. 49.

(*a*) **Required to remove.** See secs. 30 and 31, *ante*.

(*b*) **Other proceedings.** See secs. 30 (2), *ante*, and 100, 101, 134, and 135, *post*.

(*c*) **Removal of accumulations.** Where a vacant piece of land was surrounded by a hoarding, and people threw cats, dogs, and refuse thereon so as to cause a nuisance, it was held that the owner was legally bound to prevent the piece of land from continuing to be a public nuisance, and that the Attorney-General, at the relation of the local authority, was entitled to an injunction to enforce the performance of such duty. *Att.-Gen.* v. *Tod-Heatly* (1897), 1 Ch. 560; 66 L. J. Ch. 275.

54 & 55 Vict. c. 76.

disposal shall be applied in payment of the expenses incurred with reference to the matter removed, and the surplus (if any) shall be paid on demand to the former owner of the matter.

Removal of Refuse.

(2) The expenses of such removal and disposal, so far as not covered by such proceeds, may be recovered by the sanitary authority in a summary manner from the former owner of the matter removed, or from the occupier or, where there is no occupier, the owner, of the premises.

Removal of refuse from stables, cowhouses, &c.

36.—(1) The sanitary authority, if they think fit, may employ a sufficient number of scavengers, or contract with any scavengers, whether a company or individuals, for collecting and removing the manure and other refuse matter from any stables and cowhouses within their district, the occupiers of which signify their consent in writing to such removal; Provided that—

(a) such consent shall not be withdrawn or revoked without one month's previous notice to the sanitary authority, and

(b) no person shall be hereby relieved from any fine to which he may be subject for placing dung or manure upon any footways or carriageways (*d*), or for having any accumulation or deposit of manure or other refuse matter so as to be a nuisance or injurious or dangerous to health (*e*).

(2) Notice may be given by a sanitary authority (by public announcement in the district or otherwise) requiring the periodical removal of manure or other refuse matter from stables, cowhouses, or other premises; and, where any such notice has been given, if any person to whom the manure or other refuse matter belongs fails to comply with the notice, he shall be liable without further notice to a fine not exceeding twenty shillings for each day during which such non-compliance continues.

Regulations as to Waterclosets, &c.

Regulations as to Waterclosets, &c.

Obligation to provide waterclosets, &c.

37.—(1) It shall not be lawful newly to erect any house or to rebuild any house pulled down to or below the ground floor without a sufficient ashpit (*f*) furnished with proper doors and coverings, and one or more proper and sufficient waterclosets (*f*) according as circumstances may require, furnished with suitable water supply and water supply apparatus, and with suitable trapped soilpan and other suitable works and arrangements, so far as may be necessary to ensure the efficient operation thereof.

(2) If any person offends against the foregoing enactment of this section, he shall be liable to a fine not exceeding twenty pounds.

(3) If at any time it appears to the sanitary authority (*g*) that any

(*d*) **Fine for placing dung on footways, &c.** Every sanitary authority is empowered to make byelaws for the prevention of nuisances arising from rubbish, filth, &c., in any street (sec. 16 (1) (a), *ante*), and to impose penalties for breach thereof. Sec. 114, *post*, and Pub. Hlth. Act, 1875, sec. 183, *post*, p. 358.

(*e*) **Accumulation.** Nuisances arising from manure, &c., may be dealt with summarily. Sec. 2 (d), *ante*. As to byelaws with respect to receptacles for dung, see sec. 39 (1), *post*.

(*f*) **Waterclosets; ashpits.** As to byelaws with respect to waterclosets and ashpits, see sec. 39, *post*.

(*g*) **If it appears to sanitary authority.** The decision of the sanitary authority that house is not furnished with proper and sufficient water-closet accommodation is final, subject only to appeal to the County Council under sub-sec. (5); and a magistrate has no jurisdiction to reverse it. *St. John's, Hackney* v. *Hutton* (1897), 1 Q. B. 210; 66 L. J. Q. B. 74.

house, whether built before or after the commencement of this Act, is without such ashpit or waterclosets as aforesaid, the sanitary authority shall cause notice to be served on the owner or occupier of the house, requiring him forthwith, or within such reasonable time as is specified in the notice, to provide the same in accordance with the directions in the notice (*h*); and, if the notice is not complied with, the said owner or occupier shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as the case may require (*i*), and may recover the expenses (*k*) incurred by them in so doing from the owner of the house.

54 & 55 Vict. c. 76.

Regulations as to Waterclosets, &c.

(4) Provided that—

(a) where sewerage or water supply sufficient for a watercloset is not reasonably available, this section shall be complied with by the provision of a privy or earth closet; and

(b) where a watercloset has before the commencement of this Act been and is used in common by the inmates of two or more houses, and in the opinion of the sanitary authority may continue to be properly so used, they need not require a watercloset to be provided for each house.

(5) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section may appeal to the county council (*l*), whose decision shall be final.

38.—(1) Every factory, workshop, and workplace (*m*), whether erected before or after the passing of this Act, shall be provided with sufficient and suitable accommodation in the way of sanitary conveniences (*n*), regard being had to the number of persons employed in or in attendance at such building, and also where persons of both sexes are, or are intended to be, employed, or in attendance, with proper separate accommodation for persons of each sex.

Sanitary conveniences for manufactories, &c.

(2) Where it appears to a sanitary authority that this section is not complied with in the case of any factory, workshop, or workplace (*m*), the sanitary authority shall, by notice served on the owner or occupier of such factory, workshop, or workplace, require him to make the alterations and additions necessary to secure such compliance, and if the person served with such notice fails to comply therewith he shall be liable to a fine not exceeding twenty pounds, and to a fine not exceeding forty shillings for every day after conviction during which the non-compliance continues.

(*h*) **Directions in notice.** The directions must be in accordance with the byelaws made under sec. 39, *post*. Under the repealed provisions of sec. 81 of the Met. Man. Act, 1855, which are replaced, with some modifications, by the present section, it was held that the local authority could not lay down any general rule, but must exercise its authority with regard to the circumstances of each particular case. *Tinkler* v. *Wandsworth Dist. Bd.*, 2 De G. & J. 261; 27 L. J. Ch. 342.

(*i*) **Execute works.** See as to the power of the sanitary authority to execute works and recover the expenses, *St. Luke's Vestry* v. *Lewis*, 1 B. & S. 865; 31 L. J. M. C. 73; decided under secs. 81 and 85 of the Met. Man. Act, 1855.

(*k*) **Recover expenses.** See secs. 117 and 121, *post*, as to the mode of recovery.

(*l*) **Appeal to County Council.** See sec. 41 (3), and note thereto, *post*.

(*m*) **Factory, workshop, workplace.** See note to sec. 2 (1) (g), *ante*.

(*n*) **Sanitary conveniences.** Defined by sec. 141, *post*.

54 & 55 Vict. c. 76.

Regulations as to Waterclosets, &c.

Byelaws as to waterclosets, &c.

39.—(1) The county council shall make byelaws (*o*), with respect to waterclosets, earth closets, privies, ashpits, cesspools, and receptacles for dung, and the proper accessories thereof in connexion with buildings, whether constructed before or after the passing of this Act.

(2) Every sanitary authority (*p*), shall make byelaws (*o*), with respect to the keeping of waterclosets supplied with sufficient water for their effective action.

(3) It shall be the duty of every sanitary authority to observe and enforce the byelaws under this section; and any directions given by the sanitary authority under this Act shall be in accordance with the said byelaws (*q*), and so far as they are not so in accordance shall be void.

Power for sanitary authority to authorise examination of waterclosets, &c.

40.—(1) The sanitary authority may examine any of the following works, that is to say, any watercloset, earth closet, privy, ashpit, or cesspool, and any water supply (*r*), sink, trap, siphon, pipe, or other works or apparatus connected therewith, upon any premises (*s*), within their district, and for that purpose, or for the purpose of ascertaining the course of a drain, may at all reasonable times by day, after twenty-four hours' notice has been served on the occupier of the premises, or if they are unoccupied on the owner, or in case of emergency without notice, enter on any premises, and cause the ground to be opened in any place they think fit, doing as little damage as may be.

(2) If any such work as aforesaid is found on examination to be in accordance with this Act and the byelaws of the county council and sanitary authority and directions of the sanitary authority given in any notice under this Act, and in proper order and condition, the sanitary authority shall cause the same to be reinstated and made good as soon as may be, and shall defray the expenses of examination, reinstating, and making good the same, and pay full compensation for all damages or injuries done or occasioned by the examination; but if on examination any such work is found not to be in proper order or condition, or not to have been made or provided by any person according to the said byelaws and directions, or to be contrary to this Act, the reasonable expenses of the examination shall be repaid to the sanitary authority by the person offending, and may be recovered by that authority in a summary manner (*t*).

Penalty on persons improperly making or altering waterclosets, &c.

41.—(1) In any of the following cases—

(a) if, on such examination as in the preceding section mentioned, any such work as therein mentioned is found not to have been made or

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(*o*) **Byelaws.** See sec. 114, *post*. Byelaws made by the County Council do not extend to the City. Sec. 133 (b), *post*. The County Council has issued byelaws with respect to the subjects enumerated in sub-sec. (1), *supra*.

(*p*) **Sanitary authority.** See sec. 99, *post*, for meaning of this expression.

(*q*) **In accordance with byelaws.** Where the County Council made byelaws prescribing the mode of constructing future waterclosets, but made none with respect to structural alterations of existing waterclosets, it was held that a notice by a sanitary authority, requiring structural alterations in an existing watercloset, was void, there being no byelaw for it to be in accordance with. *Fulham Vestry* v. *Solomon* (1896), 1 Q. B. 198; 65 L. J. M. C. 33.

(*r*) **Water supply.** For provisions as to water supply, see secs. 41 (1) (c) and 48—50, *post*; and as to water fittings, secs. 2 (1) (f) and 4 (3) (d), *ante*.

(*s*) **Enter on premises.** See secs. 10, *ante*, and 115 and 116, *post*.

(*t*) **Summary manner.** See sec. 117, *post*.

provided by any person according to the byelaws of the county council and sanitary authority, and the directions of the sanitary authority given in any notice under this Act, or to be contrary to this Act, or

(b) if a person, without the consent of the sanitary authority, constructs or rebuilds any waterclosets, earth closet, privy, ashpit, or cesspool, which has been ordered by them either not to be made, or to be demolished, or

(c) if a person discontinues any water supply without lawful authority, or

(d) if a person destroys any sink, trap, siphon, pipe, or any connected works or apparatus as aforesaid either without lawful authority or so that the destruction creates a nuisance or is injurious or dangerous to health (*u*),

every person so offending shall be liable to a fine not exceeding ten pounds; and if he does not, within fourteen days after notice is served on him by the sanitary authority, or within any further time allowed by that authority or appearing to a petty sessional court (*x*), necessary for the execution of the works, cause such watercloset, earth closet, privy, ashpit, or cesspool to be altered or reinstated in conformity with the said byelaws and directions, or, as the case may be, to be demolished, or such water supply to be renewed, or such sink, trap, siphon, pipe or other connected works or apparatus to be restored, such person shall be liable to a fine not exceeding twenty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises (*y*), and cause the work to be done, and the expenses thereof shall be paid by the person who has so offended.

(2) If, on such examination as aforesaid, any watercloset, earth closet, privy, ashpit, or cesspool, or any water supply, sink, trap, siphon, pipe, or any of the connected works or apparatus as aforesaid, appears to be in bad order and condition, or to require cleansing, alteration, or amendment (*z*), or to be filled up, the sanitary authority shall cause notice to be served on the owner or occupier of the premises, upon or in respect of which the inspection was made, requiring him forthwith, or within a reasonable time specified in the notice, to do what is necessary to place the work in proper order and condition; and if such notice is not complied with the said owner or occupier shall be liable to a fine not exceeding five pounds, and to a further fine not exceeding forty shillings for each day during which the offence continues; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute the works, and the expenses incurred by them in so doing shall be paid to them by the owner or occupier of the premises.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to any watercloset,

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(*u*) **Nuisance or injurious or dangerous to health.** See note to sec. 2 (1) (a), *ante*.

(*x*) **Petty sessional court.** See note (*h*) to sec. 5 (1), *ante*.

(*y*) **Enter on premises.** See sec. 10, *ante*, and secs. 115 and 116, *post*.

(*z*) **Alteration or amendment.** The alteration and amendment here referred to does not comprise structural alteration. *Per Kennedy*, J., in *Fulham Vestry* v. *Solomon*, *infra*, p. 306.

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earth closet, privy, ashpit or cesspool, may appeal to the county council (*a*), whose decision shall be final.

Regulations as to Water-closets, &c.

Improper construction or repair of water-closet or drain.

42. If a watercloset or drain (*b*), is so constructed or repaired as to be a nuisance or injurious or dangerous to health (*c*), the person who undertook or executed (*d*), such construction or repair shall, unless he shows that such construction or repair was not due to any wilful act, neglect or default, be liable to a fine not exceeding twenty pounds :

Provided that where a person is charged with an offence under this section he shall be entitled, upon information duly laid by him, to have any other person, being his agent, servant, or workman, whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge, and if he proves to the satisfaction of the court that he had used due diligence to prevent the commission of the offence, and that the said other person committed the offence without his knowledge, consent, or connivance, he shall be exempt from any fine, and the said other person may be summarily convicted of the offence.

Sanitary authority to cause offensive ditches, drains, &c., to be cleansed or covered.

43.—(1) Every sanitary authority—

(a) shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches (*e*), drains (*b*), and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, which may be situate in their district ; and

(b) shall cause notice to be served on the person causing any such nuisance, or on the owner or occupier of any premises whereon the same exists, requiring him, within the time specified (*f*), in such notice, to drain, cleanse, cover, or fill up such pond, pool, ditch (*e*), drain (*b*), or place, or to construct a proper drain for the discharge of such filth, water, matter, or thing, or to execute such other works as the case may require.

(2) If the person on whom such notice is served fails to comply therewith, he shall be liable to a fine not exceeding five pounds, and a further fine not exceeding forty shillings for each day during which the offence continues ; or the sanitary authority, if they think fit, in lieu of proceeding for a fine, may enter on the premises and execute such works as may be necessary for the abatement of the nuisance, and may recover the

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(*a*) **Appeal to County Council.** The appeal must be made within seven days after the notice or act complained of, and must be conducted in accordance with secs. 211 and 212 of the Met. Man. Act, 1855, *ante*. See sec. 126, *post*. Upon a summons for non-compliance with a notice under this section, the magistrate has jurisdiction to inquire into the validity of the notice, notwithstanding this power of appeal to the County Council. *Fulham Vestry* v. *Solomon* (1896), 1 Q. B. 198 ; 65 L. J. M. C. 33. See further, on this point, note to sec. 211 of the Met. Man. Act, 1855, *ante*.

(*b*) **Drain** is not defined in this Act. See the definition of drain in sec. 250 of the Met. Man. Act, 1855, *ante*.

(*c*) **Nuisance or injurious or dangerous to health.** See note to sec. 2 (1) (*a*), *ante*.

(*d*) **Person who undertook or executed.** A builder who is employed by the owner of a dwelling-house to repair a drain, is "the person who undertook or executed such repair," and may be proceeded against, although the owner is not summoned. *Young* v. *Foster*, 69 L. T. (N. S.) 147 ; 5 R. 430.

(*e*) **Pools, open ditches, &c.** Where any pool, ditch, &c., is in such a state as to be a nuisance, or injurious, or dangerous to health, the nuisance may be dealt with summarily, sec. 2 (1) (b), *ante*.

(*f*) **Time specified.** See note to sec. 4 (1), *ante*.

expenses thereby incurred from the owner of the premises (*g*): provided that— 54 & 55 Vict. c. 76.

(a) the sanitary authority, where they think it reasonable, may defray all or any portion of the said expenses, as expenses of sewerage are to be defrayed by that authority (*h*), and

Regulations as to Waterclosets, &c.

(b) where any work which a sanitary authority does or requires to be done in pursuance of this section interferes with or prejudicially affects any ancient mill, or any right connected therewith, or other right to the use of water, the sanitary authority shall make full compensation to all persons sustaining damage thereby, in manner provided by the Metropolis Management Act, 1855 (*i*), or if they think fit, may purchase such mill, or any such right connected therewith, or other right to the use of water; and the provisions of the said Act with respect to purchases by the sanitary authority (*k*) shall be applicable to every such purchase as aforesaid. 18 & 19 Vict. c. 120.

(3) Any person who thinks himself aggrieved by any notice or act of a sanitary authority under this section in relation to the construction, covering, filling up, or other alteration of any drain may appeal to the county council (*l*) whose decision shall be final.

Power to sanitary authority to provide public conveniences.

44.—(1) Every sanitary authority may provide and maintain public lavatories and ashpits and public sanitary conveniences (*m*) other than privies, in situations where they deem the same to be required (*n*), and may supply such lavatories and sanitary conveniences with water, and may defray the expense of providing such lavatories, ashpits, and sanitary conveniences, and of any damage occasioned to any person by the erection or construction thereof, and the expense of keeping the same in good order, as if they were expenses of sewerage (*h*).

(2) For the purpose of such provision the subsoil of any road, exclusive

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(*g*) **Recovery of expenses.** See secs. 117 and 121, *post*.

(*h*) **Expenses of sewerage.** See the Met. Man. Act, 1855, secs. 158—164, *ante*.

(*i*) **Compensation.** See the Met. Man. Act, 1855, secs. 225 and 226, *ante*.

(*k*) **Purchases.** See the Met. Man. Act, 1855, secs. 150—156, *ante*.

(*l*) **Appeal to County Council.** See note (*a*) on page 306.

(*m*) **Ashpits, sanitary conveniences.** Defined by sec. 141, *post*.

(*n*) **Situations where required.** Under the corresponding provisions of the Met. Man. Act, 1855, sec. 88, a vestry passed a resolution to erect a urinal adjacent to the wall of Buckingham Palace. An interlocutory injunction was granted restraining the vestry from erecting the urinal, but was discharged on appeal, on the ground that the evidence did not show that the urinal would, in point of law, be a nuisance, or that the vestry were exceeding their statutory power, or that they were influenced by improper motives. *Biddulph* v. *St. George's, Hanover Square*, 3 De G. J. & S. 493; 33 L. J. Ch. 411. Under the same Act, Malins, V.-C., held that any question whether one place or another was more fit for the erection of a urinal must be left to the decision of the vestry, but that the vestry would be controlled by the Court if they acted in an unreasonable manner and occasioned a nuisance to adjoining property. It was further held by the Court of Appeal that as the erection of a urinal was not necessarily a nuisance, the vestry were not empowered to erect one where it would be a nuisance to adjoining owners, there being no words in the Act, which expressly or impliedly authorised them to create a nuisance. *Vernon* v. *St. James, Westminster*, 16 Ch. D. 449; 50 L. J. Ch. 81. Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 39, a mandatory injunction was granted to restrain a local board from continuing a urinal on the plaintiff's land or so near thereto as to cause injury or annoyance to her or her tenants. *Sellors* v. *Matlock Bath Loc. Bd.*, 14 Q. B. D. 928; 52 L. T. (N. S.) 762. See further as to the discretion of the local authority, *Pethick* v. *Plymouth (Mayor, &c., of)*, 58 J. P. 476; 70 L. T. (N. S.) 304; *Mason* v. *Wallasey Loc. Bd.*, 58 J. P. 477; (1876) L. J. N. C. 212; *Baird* v. *Tunbridge Wells (Mayor, &c., of)* (1894), 2 Q. B. 867; 64 L. J. Q. B. 145.

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of the footway adjoining any building or the curtilage of a building, shall be vested (*o*) in the sanitary authority.

Regulations as to Watercloset, &c.

Regulations as to public sanitary conveniences.

45.—(1) Where a sanitary authority provide and maintain any public lavatories, ashpits, or sanitary conveniences, such authority may—

(a) make regulations with respect to the management thereof, and byelaws as to the decent conduct of persons using the same (*p*); and

(b) let the same for any term not exceeding three years at such rent and subject to such conditions as they may think fit; and

(c) charge such fees for the use of any lavatories or waterclosets provided by them as they may think proper.

(2) No public lavatory, ashpit, or sanitary convenience shall be erected in or accessible from any street (*q*) without the consent in writing of the sanitary authority, who may give their consent upon such terms as to the use thereof or the removal thereof at any time, if required by the sanitary authority, as they may think fit.

(3) If any person erects a lavatory, ashpit, or sanitary convenience in contravention of this section, and after notice to that effect served by the sanitary authority does not remove the same, he shall be liable to a fine not exceeding five pounds, and to a fine not exceeding twenty shillings for every day during which the offence continues after a conviction for the offence.

(4) Nothing in this section shall extend to any lavatory or sanitary convenience now or hereafter erected by any railway company within their railway station yard or the approaches thereto.

Sanitary conveniences used in common.

46. The following provisions shall have effect with respect to any sanitary convenience used in common (*r*) by the occupiers of two or more separate dwelling-houses, or by other persons:—

(1) If any person injures or improperly fouls any such sanitary convenience, or anything used in connexion therewith, he shall for each offence be liable to a fine not exceeding ten shillings;

(2) If any such sanitary convenience or the approaches thereto, or the walls, floors, seats, or fittings thereof, is or are in the opinion of the sanitary authority or of their sanitary inspector or medical officer of health in such a state as to be a nuisance or annoyance to any inhabitant of the district for want of the proper cleansing thereof, such of the persons having the use thereof in common as may be in default, or, in the absence of proof satisfactory to the court as to which of the persons having the use thereof in common is in default, each of those persons shall be liable to a fine not exceeding ten shillings, and to a fine not exceeding five shillings for every day during which the offence continues after a conviction for the offence.

(*o*) **Vested.** See note (*a*) to sec. 96 of the Met. Man. Act, 1855, *ante*.

(*p*) **Regulations; byelaws.** This Act does not prescribe any provisions as to the making of regulations. As to byelaws, see sec. 114, *post*.

(*q*) **Street** is defined by sec. 141, *post*.

(*r*) **Sanitary convenience used in common.** Sanitary convenience is defined by sec. 141, *post*. It would appear by sec. 37 (4), *ante*, that a watercloset can only be used in common by the inmates of two or more houses where it was so used before January 1st, 1892, and, in the opinion of the sanitary authority, may continue to be properly so used.

54 & 55 Vict. c. 76.

Unsound Food.

Inspection and destruction of unsound meat, &c.

Unsound Food.

47.—(1) Any medical officer of health or sanitary inspector may at all reasonable times (*s*) enter any premises and inspect and examine

(a) any animal (*t*) intended for the food of man (*u*) which is exposed for sale (*x*) or deposited in any place (*y*) for the purpose of sale, or of preparation for sale, and

(b) any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale or deposited in any place for the purpose of sale or of preparation for sale,

the proof that the same was not exposed or deposited for any such purpose or was not intended for the food of man, resting with the person charged; and if any such animal or article appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice (*z*).

(2) If it appears to a justice that any animal or article which has been seized or is liable to be seized under this section is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same (*a*),

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(*s*) **Reasonable times.** See *Small* v. *Bickley*, *ante*, p. 286.

(*t*) **Any animal.** Under the corresponding provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 116, the Recorder of Portsmouth held that "animal" included a live animal. *Moody* v. *Leach*, 44 J. P. 459.

(*u*) **Intended for food of man.** Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), secs. 116 and 117, a person having in his possession unsound meat "intended for the food of man" is liable to be convicted, notwithstanding that he has not exposed the meat for sale. *Mallinson* v. *Carr* (1891), 1 Q. B. 48; 60 L. J. M. C. 34. A farmer sent to a salesman in London meat, which, to his knowledge, was unsound, for the purpose of its being sold and used as human food. The salesman did not expose the meat for sale, but put it aside and called the attention of an inspector of nuisances to it, and it was destroyed on a justice's order. *Held*, that in order to convict the owner of unsound meat "unlawfully deposited for the purpose of sale and intended for the food of man" of an offence under the Nuisances Removal Act, 1863 (26 & 27 Vict. c. 117), sec. 2 (now repealed), there must be either a sale or an exposure of the meat for sale. *Barlow* v. *Terrett* (1891), 2 Q. B. 107; 60 L. J. M. C. 104.

(*x*) **Exposed for sale.** Under the Pub. Hlth. Act, 1848 (11 & 12 Vict. c. 63), sec. 63, where four pieces of bad meat were seized at a stall, it was held that there were four exposures, for which there might be four convictions. *In re Hartley*, 31 L. J. M. C. 232; 26 J. P. 438. To expose for sale, or to have possession of, with intent to sell, things unfit for human food, is a nuisance at common law. *Shillito* v. *Thompson*, 1 Q. B. D. 12; 45 L. J. M. C. 18.

(*y*) **Any place.** Under the corresponding provisions of the repealed Nuisances Removal Act, 1863 (26 & 27 Vict. c. 117), sec. 2, where two carcases of cows, unfit for food, were found in a yard at the back of a butcher's shop, there being a slaughter-house on one side of the yard, the yard was held to be a "place" within the meaning of the Act. *Young* v. *Grattridge*, L. R. 4 Q. B. 166; 38 L. J. M. C. 67. Under the same Act diseased meat placed upon a cart passing through the streets of Dublin on the way to a manufactory of preserved meat was held to have been rightly seized. *Daly* v. *Webb*, 4 Ir. Rep. C. L. 309.

(*z*) **Dealt with by a justice.** Under secs. 116 and 117 of the Pub. Hlth. Act, 1875, it was held that meat might be taken before and dealt with by a justice without any summons or notice to the person to whom it belonged, and that such person having been subsequently summoned and convicted of an offence under those sections, the conviction was good. *White* v. *Redfern*, 5 Q. B. D. 15; 49 L. J. M. C. 19.

(*a*) **Shall condemn.** Where unsound meat was seized by an inspector acting under the Pub. Hlth. Act, 1875, sec. 116, at 9.35 p.m., and he was not able to find a justice until 10.15 the next morning, when an order to destroy was made, it was held that there was no unreasonable delay. *Burton* v. *Bradley*, 51 J. P. 118. Under the same Act it was held that the seized meat might be condemned and ordered to be destroyed by a justice *ex parte*, without notice to the owner to attend and show cause against the condemnation. *White* v. *Redfern*, *supra*. And in a later case it was held that although the owner of meat which has been seized under that Act is not entitled as of

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Unsound Food.

and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong (*b*) at the time of sale or exposure for sale, or deposit for the purpose of sale or of preparation for sale, or in whose possession or on whose premises the same was found, shall be liable (*c*) on summary conviction to a fine not exceeding fifty pounds for every animal, or article, or if the article consists of fruit, vegetables, corn, bread, or flour, for every parcel thereof so condemned, or, at the discretion of the court, without the infliction of a fine, to imprisonment for a term of not more than six months with or without hard labour.

(3) Where it is shown that any article liable to be seized (*d*) under this section, and found in the possession of any person was purchased by him from another person for the food of man (*e*), and when so purchased was in such a condition as to be liable to be seized and condemned under this section, the person who so sold the same shall be liable to the fine and imprisonment above mentioned, unless he proves that at the time he sold the said article he did not know, and had no reason to believe, that it was in such condition.

(4) Where a person convicted of any offence under this section has been within twelve months previously convicted of an offence under this section, the court may, if it thinks fit, and finds that he knowingly and wilfully committed both such offences, order that a notice of the facts be affixed, in such form and manner, and for such period not exceeding twenty-one days, as the court may order, to any premises occupied by that person, and that the person do pay the costs of such affixing; and if any person obstructs

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right to attend and give evidence in defence of the meat, the justice may, if he thinks fit, hear evidence tendered by such owner in that behalf. *Bater* v. *Birkenhead (Mayor, &c., of)* (1893), 2 Q. B. 77; 62 L. J. M. C. 107. And where, under that Act, a justice refuses to condemn meat which has been seized, the owner cannot decline to take it back if tendered to him, the measure of compensation to which he is entitled under sec. 308 of the Act, being the difference between the value of the meat when seized and when tendered back, plus the costs incurred through the attendance of himself and his witnesses before the magistrate. *Ib.*

(*b*) **To whom same belongs.** A meat salesman to whom meat had been consigned to sell on commission, sold a portion of it to H. Whilst the meat was on H.'s premises it was seized and condemned. *Held*, that the meat salesman could not be convicted under sub-sec. (2), but that any summons against him should be drawn under sub-sec. (3) of sec. 47. *Billing* v. *Prebble*, 66 L. J. Q. B. 180; 61 J. P. 86. An under bailiff who, acting under the instructions of the head bailiff, forwarded by railway the carcases of two diseased cows, was held not to be the person to whom the meat belonged within the Pub. Hlth. Act, 1875, sec. 115. *Newton* v. *Monckom*, 52 J. P. 692; 58 L. T. (N. S.) 231.

(*c*) **Shall be liable.** Under the Pub. Hlth. Act, 1875, sec. 117, where unwholesome meat was condemned by a justice, it was held that the owner of the meat might, on summary proceedings against him, give evidence as to the state of the meat at the time of condemnation. *Waye* v. *Thompson*, 15 Q. B. D. 342; 54 L. J. M. C. 140. Under the same Act, it was held that a person having in his possession diseased meat intended for the food of man, was liable to conviction without proof of actual personal knowledge of its condition. *Blaker* v. *Tillstone* (1894), 1 Q. B. 345; 63 L. J. M. C. 72.

(*d*) **Liable to be seized.** The vendor can only be convicted under this sub-section where the article is liable to be seized after it has got into the possession of the purchaser. *Reg.* v. *Dennis, infra.*

(*e*) **Purchased for food of man.** A fruit broker sold to a retail dealer twenty bags of walnuts, knowing that a portion of the contents of each was unsound. A printed notice was posted up in his shop to the effect that the walnuts were sold on the condition that, if any of the contents of the bag should prove unsound, the buyer should sort them and destroy the unsound walnuts. Held (Mathew, J., dissenting), that the broker was not liable to be convicted under this sub-section. *Reg.* v. *Dennis* (1894), 2 Q. B. 458; 63 L. J. M. C. 153.

the affixing of such notice, or removes, defaces, or conceals the notice while affixed during the said period, he shall for each offence be liable to a fine not exceeding five pounds. 54 & 55 Vict. c. 76.

Unsound Food.

(5) If the occupier of a licensed slaughter-house is convicted of an offence under this section, the court convicting him may cancel the licence for such slaughter-house.

(6) If any person obstructs (*f*) an officer in the performance of his duty under any warrant for entry into any premises granted by a justice in pursuance of this Act for the purposes of this section, he shall, if the court is satisfied that he obstructed with intent to prevent the discovery of an offence against this section, or has within twelve months previously been convicted of such obstruction, be liable to imprisonment for any term not exceeding one month in lieu of any fine authorised by this Act for such obstruction (*g*).

(7) A justice may act in adjudicating on an offender under this section, whether he has or has not acted in ordering the animal or article to be destroyed or disposed of.

(8) Where a person has in his possession any article which is unsound or unwholesome or unfit for the food of man, he may, by written notice to the sanitary authority, specifying such article, and containing a sufficient identification of it, request its removal, and the sanitary authority shall cause it to be removed as if it were trade refuse.

Provisions as to Water.

Provisions as to Water.

Provisions as to house without proper water supply.

48.—(1) An occupied house (*h*) without a proper and sufficient supply of water shall be a nuisance liable to be dealt with summarily (*i*) under this Act, and, if it is a dwelling-house, shall be deemed unfit for human habitation.

(2) A house which after the commencement of this Act is newly erected, or is pulled down to or below the ground floor and rebuilt, shall not be occupied as a dwelling-house until the sanitary authority have certified that it has a proper and sufficient supply of water, either from a water company or by some other means.

(3) If the sanitary authority refuse such certificate, or fail to give it within one month after (*k*) written request for the same from the owner of the house, the owner (*h*) of the house may apply to a petty sessional court (*l*), and that court, after hearing or giving the sanitary authority an opportunity to be heard, may, if they think the certificate ought to have been granted, make an order authorising the occupation of the house; but, unless such order is made, an owner who occupies or permits to be occupied the house as a dwelling-house without such certificate shall be liable to a fine not exceeding ten pounds, and to a fine not exceeding twenty shillings for every day during which it is so occupied until a proper and sufficient supply of water is provided; but the imposition

(*f*) **Obstructs.** As to what will amount to obstruction, see *Small* v. *Bickley* and *Borrow* v. *Howland*, *post*, p. 343.

(*g*) **Fine authorised.** See sec. 116, *post*.

(*h*) **House; owner.** Defined by sec. 141, *post*.

(*i*) **Nuisance liable to be dealt with summarily.** See secs. 2—6 and 12, *ante*.

(*k*) **Within one month after.** See note to sec. 107 of the Met. Man. Amend. Act, 1862, *ante*, for the meaning of this expression.

(*l*) **Petty sessional court.** See note to sec. 5 (1), *ante*.

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of such fine shall be without prejudice to any proceedings for obtaining a closing order (*m*).

Provisions as to Water.

Notice to sanitary authority of water supply being cut off.

49.—(1) Where a water company may lawfully cut off the water supply to any inhabited dwelling-house (*n*) and cease to supply such dwelling-house with water for non-payment of water rate or other cause, the company shall in every case, within twenty-four hours after exercising the said right, give notice thereof in writing to the sanitary authority of the district in which the house is situated.

(2) Any company which neglects to comply with the foregoing provision shall be liable to a fine not exceeding ten pounds, and it shall be the duty of the sanitary authority to take proceedings against any company in default.

(3) This section shall apply to every water company which is a trading company supplying water for profit.

Cleansing of cisterns.

50. Every sanitary authority shall make byelaws (*o*) for securing the cleanliness and freedom from pollution of tanks, cisterns (*p*), and other receptacles used for storing of water used or likely to be used by man for drinking or domestic purposes (*q*), or for manufacturing drink for the use of man.

Power of sanitary authority as to public fountains.

51.—(1) All existing public cisterns (*p*), reservoirs, wells, fountains, pumps, and works used for the gratuitous supply of water to the inhabitants of the district of any sanitary authority, and not vested in any person or authority (*r*) other than the sanitary authority, shall vest in and be under the control of the sanitary authority; and that authority may maintain the same and plentifully supply them with pure and wholesome water (*s*) or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient, and may maintain

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(*m*) **Closing order.** See sec. 5 (2), (6), (7), and (8), *ante*.

(*n*) **Cutting off water supply.** As to the powers of water companies to cut off the water supply, see the Waterworks Clauses Act, 1847, secs. 54, 57, and 74; the Waterworks Clauses Act, 1863, sec. 16; the Water Companies (Regulation of Powers) Act, 1887, sec. 4; the Metropolis Water Act, 1852, sec. 25; the Metropolis Water Act, 1871, sec. 32; and the West Middlesex Waterworks Act, 1852, secs. 35 and 38, *post*, vol. ii. tit. "*Water*."

Where a water company turned off the water supply of a dwelling-house in order to prevent waste of water through a leak in the service pipe, it was held that there was no "cutting off" within the meaning of this section, and that there was, therefore, no necessity for the water company to give notice to the sanitary authority. *Young* v. *Southwark and Vauxhall Water Co.*, 69 L. T. (N. S.) 144; 57 J. P. 806.

(*o*) **Byelaws.** See sec. 114, and note thereto, *post*.

(*p*) **Cistern** includes a water-butt. Sec. 141, *post*.

(*q*) **Domestic purposes.** For the meaning of this expression, see note to sec. 43 of the West Middlesex Waterworks Act, 1852, *post*, vol. ii. tit. "*Water*."

(*r*) **Not vested in any person.** The inhabitants of a village had, for the prescriptive period, used for domestic purposes the water of a well situated in a private field, and had had the well, *inter alia*, cradled with stones at their own expense. *Held*, that the well was a public well within the corresponding provisions of the Pub. Hlth. (Scotland) Act, 1867 (30 & 31 Vict. c. 101), sec. 89 (4), and that the local authority was entitled to cause the well to be covered with an iron plate, and to place a hand pump in it. *Smith* v. *Archibald*, 5 App. Cas. 489.

(*s*) **Plentifully supply with water.** Under similar provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 64, it was held that the local authority had no power to enter upon another's land and help themselves to water, and an injunction was granted to restrain them from doing so. *Edwards* v. *Joliffe* (1877), W. N. 120. It would appear that the sanitary authority may, if they think fit, limit the purposes for which the water may be used. *Hildreth* v. *Adamson*, 8 C. B. (N. S.) 587; 30 L. J. M. C. 204.

and supply with water as aforesaid other public cisterns, reservoirs, wells, fountains, pumps, and other such works within their district. 54 & 55 Vict. c. 76.

(2) The sanitary authority may provide and maintain public wells, pumps, and drinking fountains in such convenient and suitable situations as they may deem proper (*t*). *Provisions as to Water.*

(3) If any person wilfully damages any of the said wells, pumps, or fountains, or any part thereof, he shall, in addition to any punishment to which he is liable (*u*), pay to the sanitary authority the expenses (*x*) of repairing or reinstating such well, fountain, pump, or part thereof.

52.—(1) If any person (*y*) engaged in the manufacture of gas— Penalty for causing water to be corrupted by gas washings.

(a) causes or suffers to be brought or to flow into any source of water supply, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas (*z*); or,

(b) wilfully or negligently does any act connected with the making or supplying of gas whereby the water in any source of water supply (*a*) is fouled,

he shall for every such offence be liable to a fine of two hundred pounds, and, after the expiration of twenty-four hours' notice from the sanitary authority or the person to whom the water belongs in that behalf, to a further fine of twenty pounds for every day during which the offence continues.

(2) Every such fine may be recovered, with full costs of action, in the High Court, in the case of water belonging to or under the control of the sanitary authority by that authority, and in any other case by the person into whose water such washing or other substance is brought or flows, or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person after notice to him from the sanitary authority of their intention to proceed for such fine, by the sanitary authority; but such fine shall not be recoverable unless it is sued for during the continuance of the offence, or within six months after (*b*) it has ceased.

53. If any person (*y*) does any act whereby any fountain or pump is wilfully or maliciously damaged, or is guilty of any act or neglect whereby the water of any well, fountain, or pump used or likely to be used by man for drinking or domestic purposes, or for manufacturing drink for the use of man, is polluted or fouled (*c*), he shall be liable to a fine not exceeding five pounds for each offence, and a further fine not exceeding twenty shillings for every day during which the offence continues after notice is served on him by the sanitary authority in relation thereto, but this section shall not extend to offences against the last preceding section by persons engaged in the manufacture of gas. Penalty for fouling water.

(*t*) **Situations they deem proper.** See note to sec. 44 (1), *ante*.

(*u*) **Punishment.** See secs. 53 and 116, *post*.

(*x*) **Expenses.** These may be recovered summarily. Sec. 117, *post*.

(*y*) **Person**, unless a contrary intention appears, includes any body of persons, corporate or unincorporate. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 19.

(*z*) **Gas washings.** For further provisions against fouling water by gas washings, see the Gasworks Clauses Act, 1847, secs. 21—23, and cases cited thereunder, and the Metropolis Gas Act, 1860, secs. 51 and 52, *post*, vol. ii. tit. "*Gas*;" and the Waterworks Clauses Act, 1847, secs. 62—67, *post*, vol. ii. tit. "*Water*."

(*a*) **Source of water supply.** This expression is defined by sec. 141, *post*.

(*b*) **Within six months after.** See note to sec. 107 of the Met. Man. Amend. Act, 1862, *ante*.

(*c*) **Fouling water.** See also the Waterworks Clauses Act, 1847, sec. 61, *post*, vol. ii. tit. "*Water*."

54 & 55 Vict. c. 76.

Provisions as to Water.

Power to close polluted wells, &c.

54.—(1) On the representation of any person (*d*) to a sanitary authority that within their district the water in any well, tank, or cistern (*e*), public or private, or supplied from any public pump, is used or likely to be used by man for drinking or domestic purposes (*f*), or for manufacturing drink for the use of man, and is so polluted, or is likely to be so polluted, as to be injurious or dangerous to health, a petty sessional court (*g*), on complaint by such authority and after hearing the person who is the owner or occupier of the premises to which the well, tank, or cistern, belongs, if it be private, or in the case of a public well, tank, cistern, or pump, is alleged in the complaint to be interested in the same, or after giving him an opportunity of being heard, may by summary order direct the well, tank, cistern, or pump to be permanently or temporarily closed, or make such other order as appears to the court requisite to prevent injury or danger to the health of persons drinking the water.

(2) The court may, if they see fit, cause the water complained of to be analysed at the cost of the sanitary authority complaining.

(3) If the person on whom the order is made fails to comply therewith, he shall be liable to a fine not exceeding twenty pounds, and a petty sessional court on complaint by the sanitary authority may authorise that authority to execute the order, and any expenses incurred by them in so doing may be recovered in a summary manner (*h*) from the said person.

Infectious Diseases.—Notification.

Infectious Diseases.—Notification.

Notification of infectious disease.

55.—(1) Where an inmate of any house (*i*) within the district of a sanitary authority is suffering from an infectious disease to which this section applies (*k*), the following provisions shall have effect, that is to say :—

(a) The head of the family to which such inmate (in this section referred to as the patient) belongs, and in his default the nearest relatives of the patient present in the house or being in attendance on the patient, and in default of such relatives, every person in charge of or in attendance on the patient, and in default of any such person the master of the house (*i*), shall, as soon as he becomes aware that the patient is suffering from an infectious disease to which this section applies, send notice thereof to the medical officer of health of the district :

(b) Every medical practitioner attending on or called in to visit the patient shall forthwith, on becoming aware that the patient is suffering from an infectious disease to which this section applies (*k*), send to the medical officer of health of the district a certificate stating the full name and the age and sex of the patient, the full postal address of the house, and the infectious disease from which in the opinion of such medical practitioner the patient is suffering, and stating also whether the case occurs in the private practice of such practitioner or in his practice as a medical officer of any public body

(*d*) **Person.** See note (*y*) on page 313.
(*e*) **Cistern** includes a water-butt. Sec. 141, *post*.
(*f*) **Domestic purposes.** See note (*g*) on page 312.
(*g*) **Petty sessional court.** See note to sec. 5 (1), *ante*.
(*h*) **Recovery of fines and expenses.** See secs. 117 and 118, *post*.
(*i*) **House ; master of the house.** Defined by sec. 141, *post*.
(*k*) **Infectious disease to which section applies.** The infectious diseases of which notification is required, enumerated in sub-sec. (8) of the present section, may be added to by the sanitary authorities or by the County Council. Sec. 56, *post*.

or institution, and where the certificate refers to the inmate of a hospital it shall specify the place from which and the date at which the inmate was brought to the hospital, and shall be sent to the medical officer of health of the district in which the said place is situate:

Provided that, in the case of a hospital of the metropolitan asylum managers (*l*), a notice or certificate need not be sent respecting any inmate with respect to whom a copy of the certificate has been previously forwarded by the medical officer of health of the district to the said managers.

(2) Every person required by this section to send a notice or certificate, who fails forthwith to send the same, shall be liable to a fine not exceeding forty shillings: provided that if a person is not required to send notice in the first instance, but only in default of some other person, he shall not be liable to any fine if he satisfies the court that he had reasonable cause to suppose that the notice had been duly sent.

(3) The Local Government Board may prescribe forms for the purpose of certificates (*m*) to be sent in pursuance of this section, and if such forms are so prescribed, they shall be used in all cases to which they apply. The sanitary authority shall gratuitously supply forms of certificate to any medical practitioner residing or practising in their district who applies for the same, and shall pay to every medical practitioner for each certificate duly sent by him in accordance with this section a fee of two shillings and sixpence if the case occurs in his private practice, and of one shilling if the case occurs in his practice as medical officer of any public body or institution.

(4) Where a medical officer of health receives a certificate under this section relating to a patient within the metropolitan asylum district (*l*), he shall, within twelve hours after such receipt, send a copy thereof to the metropolitan asylum managers, and to the head teacher of the school attended by the patient (if a child), or by any child who is an inmate of the same house as the patient. The metropolitan asylum managers shall repay to the sanitary authority the fees paid by that authority in respect of the certificates whereof copies have been so sent to the managers. The managers shall send weekly to the county council, and to every medical officer of health, such return of the infectious diseases of which they receive certificates in pursuance of this section as the county council require.

(5) Where in any district of a sanitary authority there are two or more medical officers of health of that authority, a certificate under this section shall be sent to such one of those officers as has charge of the area in which is the patient referred to in the certificate, or to such other of those officers as the sanitary authority may direct.

(6) A notice or certificate to be sent to a medical officer in pursuance of this section may be sent to such officer at his office or residence.

(7) This section shall apply to every building, vessel (*n*), tent, van, shed,

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(*l*) **Metropolitan Asylum Managers . . . district.** See note to sec. 44 of the Loc. Govt. Act, 1888, *ante*, as to the constitution and district of the Metropolitan Asylum Managers.

(*m*) **Forms of certificates.** See the form of certificate prescribed by the Loc. Govt. Bd., *post*, p. 373.

(*n*) **Vessel.** For the purposes of this Act any vessel lying within the district of a sanitary authority is subject to such authority's jurisdiction in the same manner as if it were a house, sec. 110 (1), *post*.

54 & 55 Vict. c. 76.

Infectious Diseases.—Notification.

or similar structure used for human habitation (*o*), in like manner as nearly as may be as if it were a house; but nothing in this section shall extend to any house, building, vessel, tent, van, shed, or similar structure belonging to Her Majesty the Queen, or to any inmate thereof, nor to any vessel belonging to any foreign government.

(8) In this section the expression "infectious disease to which this section applies" (*p*) means any of the following diseases, namely, small-pox (*q*), cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, continued, or puerperal, and includes as respects any particular district any infectious disease to which this section has been applied by the sanitary authority of the district in manner provided by this Act.

Power of sanitary authority to add to number of infectious diseases of which notification is required.

56.—(1) The sanitary authority of any district may, by resolution passed at a meeting of that authority of which such notice has been given as in this section mentioned, order that the foregoing section with respect to the notification of infectious disease shall apply in their district to any infectious disease other than a disease specifically mentioned in that section; any such order may be permanent or temporary, and, if temporary, the period during which it is to continue in force shall be specified therein, and any such order may be revoked or varied by the sanitary authority which made the same.

(2) Fourteen clear days at least before (*r*) the meeting at which such resolution is proposed special notice of the meeting, and of the intention to propose the making of such order, shall be given to every member of the sanitary authority, and the notice shall be deemed to have been duly given to a member if it is given in the mode in which notices to attend meetings of the sanitary authority are usually given.

(3) An order under this section and the revocation and variation of any such order shall not be of any validity until it has been approved by the Local Government Board, and when it is so approved the sanitary authority shall give public notice thereof by advertisement in a local newspaper, and by handbills, and otherwise in such manner as the sanitary authority think sufficient for giving information to all persons interested; they shall also send a copy thereof to each legally qualified medical practitioner (*s*) whom, after due inquiry, they ascertain to be residing or practising in their district.

(4) The said order shall come into operation at such date not earlier than one week after the publication of the first advertisement of the approved order as the sanitary authority may fix, and upon the order coming into operation, and during the continuance thereof, an infectious disease mentioned in the order shall, within the district of the authority, be an infectious disease to which the foregoing section with respect to the notification of infectious disease applies.

(*o*) **Tent, van, shed, &c.** Any person duly authorised by a sanitary authority may enter by day any tent, van, shed, &c., in which he has reasonable cause to suppose that there is any person suffering from a dangerous infectious disease. Sec. 95 (3), *post*.

(*p*) **Infectious disease to which section applies.** See note (*k*) on page 314.

(*q*) **Small-pox.** A sanitary authority has no legal specific right to enforce the performance by the guardians of their duties under the Vaccination Acts, and is not therefore entitled to a *mandamus* to compel them to perform such duties. *Reg.* v. *Lewisham Union* (*Guardians of*) (1897), 1 Q. B. 498; 61 J. P. 151.

(*r*) **Fourteen clear days at least before.** See note (*k*) to sec. 19 (3), *ante*.

(*s*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.

(5) In the case of emergency three clear days (*t*) notice of the meeting and of the intention to propose the making of the order shall be sufficient, and the resolution shall declare the cause of the emergency and shall be for a temporary order, and a copy thereof shall be forthwith sent to the Local Government Board and advertised, and the order shall come into operation at the expiration of one week from the date of the advertisement; but unless approved by the Local Government Board shall cease to be in force at the expiration of one month after it is passed or any earlier date fixed by the Local Government Board; if it is approved by the Local Government Board that approval shall be conclusive evidence that the case was one of emergency. 54 & 55 Vict. c. 76. *Infectious Diseases.—Notification.*

(6) The county council shall, as respects London (*u*), have the same power of extending the foregoing section by order to any infectious disease, and the same power of revoking and varying the order, as a sanitary authority have under this section as respects their district; and the foregoing section when so extended by the county council shall be construed as if it had been applied under this section as respects every district in London by the sanitary authority thereof.

57.—(1) A payment made to any medical practitioner in pursuance of the provisions of this Act with respect to the notification of infectious disease shall not disqualify that practitioner for serving as member of the county council, or of a sanitary authority, or as guardian of a poor law union, or in any other public office (*x*). Non-disqualification of medical officer by receipt of fees.

(2) Where a medical practitioner attending on a patient is himself the medical officer of health of the district, he shall be entitled to the same fee as if he were not such medical officer.

Infectious Diseases,—Prevention.

Infectious Diseases.—Prevention.

58. The following provisions of this Act relating to dangerous infectious diseases shall apply to the infectious diseases specifically mentioned in the foregoing enactment of this Act (*y*) relating to the notification of infectious disease, and all or any of such provisions may be applied by order to any other infectious disease in the same manner as that enactment may be applied to such disease, subject to the same power of revoking and varying the order (*z*), and every such infectious disease is in this Act referred to as a dangerous infectious disease. Application of special provisions to certain infectious diseases.

59.—(1) Every sanitary authority shall provide, either within or without their district, proper premises with all necessary apparatus and attendance for the destruction and for the disinfection, and carriages or vessels for the removal, of articles (whether bedding, clothing, or other) which have become infected by any dangerous infectious disease (*a*), and may provide Provision of means for disinfecting of bedding, &c.

(*t*) **Three clear days,** i.e., three days' notice exclusive of the day on which the notice is given, and of the day on which the meeting is to be held. *Liffin* v. *Pitcher*, 1 Dowl. (N. S.) 767.

(*u*) **London,** i.e., the administrative county of London. Sec. 141, *post*.

(*x*) **Shall not disqualify.** Being concerned in any contract or employment with the County Council or with a vestry or district board or board of guardians is a disqualification for being elected or being a member of such Council, vestry, or board. Mun. Corp. Act, 1882, sec. 12, *ante*; Loc. Govt. Act, 1894, sec. 46, *post*.

(*y*) **Specifically mentioned.** See sec. 55 (8), *ante*.

(*z*) **Revoking and varying the order.** See sec. 56, *ante*.

(*a*) **Dangerous infectious disease.** See sec. 58, *ante*.

54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

the same for the destruction, disinfection, and removal of such articles when infected by any other disease; and shall cause any such articles brought for destruction or disinfection, whether alleged to be infected by any dangerous infectious disease or by any other disease, to be destroyed or to be disinfected and returned, and may remove, and may destroy, or disinfect and return, such articles free of charge.

(2) Any sanitary authorities may execute their duty under this section by combining for the purposes thereof, or by contracting for the use by one of the contracting authorities of any premises provided for the purpose of this section by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

Cleansing and disinfecting of premises, &c.

60.—(1) Where the medical officer of health of any sanitary authority, or any other legally qualified medical practitioner (*b*), certifies that the cleansing and disinfecting of any house (*c*), or part thereof, and of any articles therein likely to retain infection, or the destruction of such articles, would tend to prevent or check any dangerous infectious disease (*d*), the sanitary authority shall serve notice on the master (*c*), or where the house or part is unoccupied on the owner (*c*), of such house or part that the same and any such articles therein will be cleansed and disinfected or (as regards the articles) destroyed, by the sanitary authority, unless he informs the sanitary authority within twenty-four hours from the receipt of the notice that he will cleanse and disinfect the house or part and any such articles or destroy such articles to the satisfaction of the medical officer of health, or of any other legally qualified medical practitioner, within a time fixed in the notice.

(2) If either—

(a) within twenty-four hours from the receipt of the notice, the person on whom the notice is served does not inform the sanitary authority as aforesaid, or

(b) having so informed the sanitary authority he fails to have the house or part thereof and any such articles disinfected or such articles destroyed as aforesaid within the time fixed in the notice, or

(c) the master or owner without such notice gives his consent,

the house or part and articles shall be cleansed and disinfected or such articles destroyed by the officers and at the cost of the sanitary authority under the superintendence of the medical officer of health.

(3) For the purpose of carrying into effect this section the sanitary authority may enter by day (*e*) on any premises.

(4) The sanitary authority shall provide, free of charge, temporary shelter or house accommodation with any necessary attendants for the members of any family in which any dangerous infectious disease has appeared, who have been compelled to leave their dwellings, for the purpose of enabling such dwellings to be disinfected by the sanitary authority.

(5) When the sanitary authority have disinfected any house, part of a house, or article, under the provisions of this section, they shall compensate the master or owner of such house, or part of a house, or the owner of such article, for any unnecessary damage thereby caused to such house, part of a

(*b*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.
(*c*) **House; master; owner.** Defined by sec. 141, *post*.
(*d*) **Dangerous infectious disease.** See sec. 58, *ante*.
(*e*) **Enter by day**, i.e., from 6 a.m. to 9 p.m. See also sec. 116, *post*.

house, or article; and when the authority destroy any article under this section they shall compensate the owner thereof; and the amount of any such compensation shall be recoverable in a summary manner (*f*). 54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

Disinfection of bedding, &c.

61.—(1) Any sanitary authority may serve a notice on the owner of any bedding, clothing, or other articles which have been exposed to the infection of any dangerous infectious disease (*g*), requiring the delivery thereof to an officer of the sanitary authority for removal for the purpose of destruction or disinfection; and if any person fails to comply with such notice he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(2) The bedding, clothing, and articles if so disinfected by the sanitary authority shall be brought back and delivered to the owner free of charge, and if any of them suffer any unnecessary damage the authority shall compensate the owner for the same, and the authority shall also compensate the owner for any articles destroyed; and the amount of compensation shall be recoverable in a summary manner (*f*).

Infectious rubbish thrown into ashpits, &c., to be disinfected.

62.—(1) If a person knowingly casts, or causes or permits to be cast, into any ashpit (*h*) any rubbish infected by a dangerous infectious disease (*g*) without previous disinfection, he shall be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence so continues after the notice hereafter in this section mentioned.

(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house (*h*) or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease, and on the request of such master shall provide for the removal and disinfection or destruction of the aforesaid rubbish.

Penalty on letting houses in which infected persons have been lodging.

63.—(1) Any person who knowingly lets for hire (*i*) any house (*k*), or part of a house, in which any person has been suffering from any dangerous infectious disease (*g*), without having such house or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner (*l*), as testified by a certificate signed by him, or (as regards the articles) destroyed, shall be liable to a fine not exceeding twenty pounds.

(2) For the purposes of this section, the keeper of an inn (*m*) shall be deemed to let for hire part of a house to any person admitted as a guest into such inn.

(*f*) **Recoverable in summary manner,** or in the county court if the amount does not exceed fifty pounds. Sec. 117, *post*. For the time and manner of taking summary proceedings, see note to sec. 227 of the Met. Man. Act, 1855, *ante*.

(*g*) **Dangerous infectious disease.** See sec. 58, *ante*.

(*h*) **Ashpit; master of a house.** These expressions are defined by sec. 141, *post*.

(*i*) **Lets for hire.** Admitting persons to a night shelter at a charge of one penny each is not a letting for hire within the meaning of sec. 63. *Colclough* v. *Edwards*, 57 J. P. 772.

(*k*) **House** is defined by sec. 141, *post*.

(*l*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.

(*m*) **Inn.** An inn or hostel may be defined to be a house in which travellers, passengers, wayfaring men, and other such-like casual guests are accommodated with victuals and lodgings and whatever they reasonably desire for themselves and their horses, at a reasonable price while on their way. 1 Burn's Jus. 64; *Thompson* v. *Lacy*, 3 B. & Ald. 283; *Reg.* v. *Rymer*, 2 Q. B. D. 136; 46 L. J. M. C. 108.

54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

Penalty on persons letting houses making false statements as to infectious disease.

64. Any person letting for hire (*n*), or showing for the purpose of letting for hire, any house (*o*) or part of a house, who, on being questioned by any person negotiating for the hire, as to the fact of there being, or within six weeks previously having been, therein any person suffering from any dangerous infectious disease (*p*), knowingly makes a false answer to such question, shall be liable, at the discretion of the court, to a fine not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

Penalty on ceasing to occupy house without disinfection or notice to owner, or making false answer.

65.—(1) Where a person ceases to occupy any house (*o*), or part of a house, in which any person has within six weeks previously been suffering from any dangerous infectious disease (*p*), and either—

(a) fails to have such house, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner (*q*), as testified by a certificate signed by him, or such articles destroyed, or

(b) fails to give to the owner or master of such house (*r*), or part of a house, notice of the previous existence of such disease, or

(c) on being questioned by the owner or master of, or by any person negotiating for the hire of, such house or part of a house, as to the fact of there having within six weeks previously been therein any person suffering from any dangerous infectious disease, knowingly makes a false answer to such question,

he shall be liable to a fine not exceeding ten pounds.

(2) The sanitary authority shall cause their officers to serve notice of the provisions of this section on the master of any house (*r*) or part of a house in which they are aware that there is a person suffering from a dangerous infectious disease.

Removal to hospital of infected persons without proper lodging.

66.—(1) A person suffering from any dangerous infectious disease (*p*), who is without proper lodging or accommodation, or is lodged in a tent or van (*s*), or is on board a vessel (*t*), may, on a certificate signed by a legally qualified medical practitioner (*q*), and with the consent of the superintending body of the hospital (*t*) to which he is to be removed, be removed by order of a justice, and at the cost of the sanitary authority of the district where such person is found, to any hospital in or within a convenient distance of London (*t*).

(2) The order may be addressed to such constable or officer of the sanitary authority as the justice making the same thinks expedient; and if any person wilfully disobeys or obstructs (*u*) the execution of such order he shall be liable to a fine not exceeding ten pounds.

(3) Any sanitary authority may make byelaws (*x*) for removing to any hospital to which that authority are entitled to remove patients, and for keeping in that hospital so long as may be necessary, any persons brought

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(*n*) **Lets for hire.** See note (*i*) on page 319.
(*o*) **House** is defined by sec. 141, *post*.
(*p*) **Dangerous infectious disease.** See sec. 58, *ante*.
(*q*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.
(*r*) **Owner; master of a house.** These expressions are defined by sec. 141, *post*.
(*s*) **Tent or van.** Power to enter any tent or van where there is reasonable cause to suppose that there is any person suffering from a dangerous infectious disease, is conferred by sec. 95 (3), *post*.
(*t*) **Vessel; hospital; London.** These expressions are defined by sec. 141, *post*.
(*u*) **Wilfully obstructs.** See *Small* v. *Bickley* and *Borrow* v. *Howland*, *post*, p. 343.
(*x*) **Byelaws.** See sec. 114, and note thereto, *post*.

within their district by any vessel who are infected with a dangerous infectious disease (*z*). 54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

67.—(1) A justice, on being satisfied that a person suffering from any dangerous infectious disease (*z*) is in a hospital (*a*), and would not on leaving the hospital be provided with lodging or accommodation in which proper precautions could be taken to prevent the spreading of the disease by such person, may direct such person to be detained in the hospital at the cost of the metropolitan asylum managers (*b*) during the time limited by the justice. Any justice may enlarge the time as often as appears to him necessary for preventing the spread of the disease.

Detention of infected person without proper lodging in hospital.

(2) The direction may be carried into execution by any officer of any sanitary authority, or of the metropolitan asylum managers, or by any inspector of police, or any officer of the hospital.

68.—(1) If any person—

Penalty on exposure of infected persons and things.

(a) while suffering from any dangerous infectious disease (*z*) wilfully exposes (*c*) himself without proper precautions (*d*) against spreading the said disease in any street, public place, shop, or inn; or

(b) being in charge of any person (*e*) so suffering, so exposes such sufferer; or

(c) gives, lends, sells, transmits, removes, or exposes, without previous disinfection, any bedding, clothing, or other articles which have been exposed to infection from any such disease;

he shall be liable to a fine not exceeding five pounds.

(2) Provided that proceedings under this section shall not be taken against persons transmitting with proper precautions any bedding, clothing, or other articles for the purpose of having the same disinfected (*f*).

69. A person who knows himself to be suffering from a dangerous infectious disease (*z*) shall not milk any animal or pick fruit, and shall not engage in any occupation connected with food or carry on any trade or business in such a manner as to be likely to spread the infectious disease, and if he does so he shall be liable to a fine not exceeding ten pounds.

Prohibition on infected person carrying on business.

(*z*) **Dangerous infectious disease.** See sec. 58, *ante*.

(*a*) **Hospital** is defined by sec. 141, *post*.

(*b*) **Cost of Metropolitan Asylum Managers.** See sec. 104, *post*.

(*c*) **Exposes.** Carrying or causing to be carried along a public highway a child infected with small-pox has been held to be an indictable offence at common law. *Rex* v. *Vantandillo*, 4 M. & S. 73; *Rex* v. *Burnett*, 4 M. & S. 272. A lodging-house keeper was held to be entitled to damages against a lodger who knowingly introduced into his house children infected with scarlet fever, in consequence of which the plaintiff lost four of his children, and was put to expense for medical attendance and their funerals. *Best* v. *Stapp*, 2 C. P. D. 191, *n*.

(*d*) **Without proper precautions.** See *Tunbridge Wells Loc. Bd.* v. *Bisshopp*, *infra*.

(*e*) **In charge of any person.** A medical man who walked through the streets with a patient suffering from scarlet fever, to the chairman of the local board, to obtain an order for the patient's admission to the fever hospital, which had been refused at the hospital, and subsequently accompanied him to the police station to procure an ambulance for his conveyance there, was held not to be a "person in charge" of the patient, or to have exposed him "without proper precautions," within the meaning of the corresponding provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 126. *Tunbridge Wells Loc. Bd.* v. *Bisshopp*, 2 C. P. D. 187.

(*f*) **Transmitting articles to be disinfected.** Every sanitary authority is required to provide premises for the destruction, and disinfection, and carriages or vessels for the removal, of articles which have become infected. Sec. 59, *ante*. They are also, on the request of the master of a house, bound to remove and disinfect or destroy infected rubbish. Sec. 62, *ante*.

54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

Prohibition on conveyance of infected person in public conveyance.

70. It shall not be lawful for any owner or driver of a public conveyance knowingly to convey, or for any other person knowingly to place, in any public conveyance, a person suffering from any dangerous infectious disease (*g*), or for a person suffering (*h*) from any such disease to enter any public conveyance, and if he does so he shall be liable to a fine not exceeding ten pounds; and, if any person so suffering is conveyed in any public conveyance, the owner or driver thereof, as soon as it comes to his knowledge, shall give notice to the sanitary authority, and shall cause such conveyance to be disinfected, and if he fails so to do he shall be liable to a fine not exceeding five pounds, and the owner or driver of such conveyance shall be entitled to recover in a summary manner (*i*) from the person so conveyed by him, or from the person causing that person to be so conveyed, a sum sufficient to cover any loss and expense incurred by him in connexion with such disinfection. It shall be the duty of the sanitary authority, when so requested by the owner or driver of such public conveyance, to provide for the disinfection of the same, and they may do so free of charge.

Inspection of dairies, and power to prohibit supply of milk.

71.—(1) If the medical officer of health of any district has evidence that any person in the district is suffering from a dangerous infectious disease (*g*) attributable to milk supplied within the district from any dairy (*k*) situate within or without the district, or that the consumption of milk from such dairy is likely to cause any such infectious disease to any person residing in the district, such medical officer shall, if authorised by an order of a justice having jurisdiction in the place where the dairy is situate, have power to inspect the dairy, and if accompanied by a veterinary inspector (*l*) or some other properly qualified veterinary surgeon (*m*) to inspect the animals therein; and, if on such inspection the medical officer of health is of opinion that any such infectious disease is caused from consumption of the milk supplied therefrom, he shall report thereon to the sanitary authority, and his report shall be accompanied by any report furnished to him by the said veterinary inspector or veterinary surgeon, and the sanitary authority may thereupon serve on the dairyman (*k*) notice to appear before them within such time, not less than twenty-four hours, as may be specified in the notice, to show cause why an order should not be made requiring him not to supply any milk therefrom within the district until the order has been withdrawn by the sanitary authority.

(2) The sanitary authority, if in their opinion he fails to show such cause, may make the said order, and shall forthwith serve notice of the facts on the county council of the county in which the dairy is situate, and

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(*g*) **Dangerous infectious disease.** See sec. 58, *ante*.

(*h*) **Person suffering.** This section does not apply to the conveyance of the bodies of persons who have died from any dangerous infectious disease, as to which see sec. 74, *post*.

(*i*) **Summary manner.** See sec. 117, *post*.

(*k*) **Dairy; dairyman.** These expressions are defined by sec. 141, *post*.

(*l*) **Veterinary inspector,** i.e., an inspector appointed under the Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), *post*, vol. ii., who is a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Board of Agriculture. *Ib.* sec. 59 (1).

(*m*) **Properly qualified veterinary surgeon,** i.e., a person who for the time being is on the register of veterinary surgeons, or who at the time of the passing of the Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), held the veterinary certificate of the Highland and Agricultural Society of Scotland. *Ib.* sec. 17.

on the Local Government Board, and, if the dairy is situate within the district of another sanitary authority, on such authority. 54 & 55 Vict. c. 76.

(3) The said order shall be forthwith withdrawn on the sanitary authority or their medical officer of health on their behalf being satisfied that the milk supply has been changed, or that the cause of the infection has been removed. *Infectious Diseases.—Prevention.*

(4) If any person refuses to permit the medical officer of health, on the production of a justice's order under this section, to inspect any dairy, or if so accompanied as aforesaid to inspect the animals kept there, or, after any such order has been made, supplies any milk within the district in contravention of the order or sells it for consumption therein, he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and, if the offence continues, to a further fine not exceeding forty shillings for every day during which the offence continues.

(5) Provided that—

(a) proceedings in respect of the offence shall be taken before a court having jurisdiction in the place where the dairy is situate, and

(b) a dairyman shall not be liable to an action for breach of contract if the breach be due to an order under this section.

(6) Proceedings may be taken under this section in respect of a dairy situate in the district of a local authority under the Public Health Acts (*n*), and the notice of the facts shall be served on the local authority as if they were a sanitary authority within the meaning of this Act.

(7) Nothing in or done under this section shall interfere with the operation or effect of the Contagious Diseases (Animals) Acts, 1878 to 1886 (*o*), or this Act, or of any order, licence, or act of the Board of Agriculture or the Local Government Board thereunder, or of any order, byelaw, regulation, licence, or act of a local authority made, granted, or done under any such order of the Board of Agriculture or the Local Government Board, or exempt any dairy, building, or thing or any person from the provisions of any general Act relating to dairies, milk, or animals.

Prohibition of retention of dead body in certain cases.

72.—(1) A person shall not without the sanction in writing of the medical officer of health, or of a legally qualified medical practitioner (*p*), retain unburied (*q*) for more than forty-eight hours elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or workroom, the body of any person who has died of any dangerous infectious disease (*r*).

(2) If a person acts in contravention of this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds.

Body of person dying of infectious disease in hospital, &c., to be removed only for burial.

73.—(1) If a person dies in a hospital (*s*) from any dangerous infectious disease (*r*), and the medical officer of health, or any legally qualified medical practitioner (*p*), certifies that in his opinion it is desirable, in order

(*n*) **Public Health Acts**, i.e., The Public Health Act, 1875 (38 & 39 Vict. c. 55), and subsequent Acts. Short Titles Act, 1896 (59 & 60 Vict. c. 14).

(*o*) **Contagious Diseases (Animals) Acts, 1878 to 1886.** These Acts are repealed and replaced by the Diseases of Animals Act, 1894, *post*, vol. ii.

(*p*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.

(*q*) **Retain unburied.** Where a body is retained unburied, in contravention of this section, a justice may, on a certificate signed by a medical officer of health or other legally qualified practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, or that the body be buried immediately. Sec. 89, *post*.

(*r*) **Dangerous infectious disease.** See sec. 58, *ante*, for meaning of this expression.

(*s*) **Hospital** is defined by sec. 141, *post*.

54 & 55 Vict. c. 76.

Infectious Diseases.—Prevention.

to prevent the risk of communicating such infectious disease, that the body be not removed from such hospital except for the purpose of being forthwith buried, it shall not be lawful for any person to remove the body except for that purpose; and the body when taken out of such hospital shall be forthwith taken direct to the place of burial, and there buried.

(2) If any person wilfully offends against this section he shall, on the information of the sanitary authority, be liable to a fine not exceeding ten pounds.

(3) Nothing in this section shall prevent the removal of a dead body from a hospital to a mortuary, and such mortuary shall, for the purposes of this section, be deemed part of such hospital.

Disinfection of public conveyances if used for carrying corpses.

74. If—

(a) a person hires or uses a public conveyance other than a hearse for conveying the body of a person who has died (*t*) from any dangerous infectious disease (*u*) without previously notifying to the owner or driver of the conveyance that such person died from infectious disease, or

(b) the owner or driver does not, immediately after the conveyance has to his knowledge been used for conveying such body, provide for the disinfection of the conveyance,

he shall, on the information of the sanitary authority, be liable to a fine not exceeding five pounds, and if the offence continues to a further fine not exceeding forty shillings for every day during which the offence continues.

Hospitals and Ambulances.

Hospitals and Ambulances.

Power of sanitary authority to provide hospitals.

75.—(1) Any sanitary authority may provide (*x*) for the use of the inhabitants of their district hospitals temporary or permanent, and for that purpose may—

(a) themselves build such hospitals (*y*) or

(b) contract (*z*) for the use of any hospital or part of a hospital, or

(c) enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

(*t*) **Person who has died.** The conveyance in a public conveyance of a person suffering from a dangerous infectious disease is absolutely prohibited by sec. 70, *ante*.

(*u*) **Dangerous infectious disease.** See sec. 58, *ante*.

(*x*) **May provide.** These words are permissive, and do not authorise the sanitary authority to establish a hospital so as to be a nuisance. See *Metropolitan Asylum Managers* v. *Hill*, 6 App. Cas. 193; 50 L. J. Q. B. 353, where it was held that a similar permissive provision of the Metropolitan Poor Act, 1867 (30 Vict. c. 6), was no answer to an action for an injunction and damages for a nuisance arising from a small-pox hospital. But, in order to obtain an injunction to restrain the erection of a hospital, it must be shown that there is a strong probability that the apprehended mischief will arise. Mere fear of danger is not sufficient. *Att.-Gen.* v. *Manchester Corporation* (1893), 2 Ch. 87; 62 L. J. Ch. 459. See also cases there cited, and *Chambers* v. *Metropolitan Asylum Managers*, 25 S. J. 834; and *Bendelow* v. *Wortley Guardians*, 57 L. J. Ch. 762; 57 L. T. (N. S.) 849. As to prohibiting by injunction the use of premises for hospital purposes in breach of restrictive covenants, see *Tod-Heatly* v. *Benham*, 40 Ch. D. 80; 58 L. J. Ch. 83.

Under the corresponding provision of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 131, it was held that a local authority may establish a small-pox hospital outside their own district without the consent of the local authority of the district in which they erect it. *Withington Loc. Bd.* v. *Manchester Corporation*, *ante*, p. 290.

(*y*) **Hospital** is defined by sec. 141, *post*.

(*z*) **Contract.** See the Met. Man. Act, 1855, sec. 149, and notes thereto, *ante*.

(2) Two or more sanitary authorities may combine in providing a common hospital. 54 & 55 Vict. c. 76.

Hospitals and Ambulances.

Recovery of cost of maintenance of non-infectious patient in hospital.

76. Any expenses incurred by a sanitary authority in maintaining in a hospital (whether or not belonging to that authority) a patient who is not a pauper, and is not suffering from an infectious disease, shall be a simple contract debt due to the sanitary authority from that patient, or from any person liable by law to maintain him (*b*) but proceedings for its recovery shall not be commenced after the expiration of six months from the discharge of the patient, or if he dies in such hospital from the date of his death.

Power to provide temporary supply of medicine.

77. Any sanitary authority may, with the sanction of the Local Government Board, themselves provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Provision of conveyance for infected persons.

79. A sanitary authority may provide and maintain carriages suitable for the conveyance of persons suffering from any infectious disease, and pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Power for metropolitan asylum board to provide landing places, vessels, ambulances, &c.

79.—(1) The metropolitan asylum managers (*c*) shall continue to maintain the wharves, landing-places, and approaches thereto heretofore provided by them, whether within or without London, and may use the same for the embarkation and landing of persons removed to or from any hospital belonging to the managers, and for any other purpose in relation thereto.

(2) The managers may also provide and maintain vessels for use in connexion with the said wharves or landing-places, and with the hospitals of the managers, and also carriages suitable for the conveyance of persons suffering from any dangerous infectious disease (*d*), and shall cause the vessels and carriages to be from time to time properly cleansed and disinfected, and may provide and maintain such buildings and horses, and employ such persons, and do such other things as are necessary or proper for the purposes of such conveyance.

(3) The metropolitan asylum managers may allow any of the said carriages with the necessary attendants to be also used for the conveyance of persons suffering from any dangerous infectious disease to and from hospitals and places other than hospitals provided by the managers, and may make a reasonable charge for that use.

Reception of non-pauper fever and

80.—(1) The metropolitan asylum managers (*c*), subject to such regulations and restrictions as the Local Government Board prescribe, may admit

(*b*) **Liable by law to maintain.** A man is liable at common law for the maintenance of his wife and children. Under certain circumstances, a married woman, having separate property, is liable for the maintenance of her husband and children. Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), secs. 20 and 21. By the Poor Relief Act, 1601 (43 Eliz. c. 2), sec. 7, "the father and grandfather, and mother and grandmother, and the children of every poor, blind, lame, and impotent person or other poor person not able to work, being of sufficient ability, shall, at their own charges, relieve and maintain every such poor person . . ."

(*c*) **Metropolitan Asylum Managers.** See note to sec. 44 of the Loc. Govt. Act, 1888, *ante*, as to the constitution and powers of these managers. They have, for the purpose of the epidemic regulations of the Loc. Govt. Bd., such powers and duties of a sanitary authority as may be assigned to them by the regulations. Sec. 85, *post*. As to defraying their expenses under this Act, see sec. 104, *post*.

(*d*) **Dangerous infectious disease.** See sec. 58, *ante*.

54 & 55 Vict. c. 76.

Hospitals and Ambulances.

small-pox patients into hospital in metropolitan district.

any person, who is not a pauper, and is reasonably believed to be suffering from fever or small-pox or diphtheria, into a hospital provided by the managers.

(2) The expenses incurred by the managers for the maintenance of any such person shall be paid by the board of guardians of the poor law union from which he is received.

(3) The said expenses shall be repaid to the board of guardians out of the metropolitan common poor fund (*e*).

(4) The admission of a person suffering from an infectious disease into any hospital provided by the metropolitan asylum managers, or the maintenance of any such person therein, shall not be considered to be parochial relief, alms, or charitable allowance to any person, or to the parent or husband of any person; nor shall any person or his or her parent or husband be by reason thereof deprived of any right or privilege, or be subjected to any disability or disqualification (*f*).

Reception into hospital in metropolitan district of child from school outside London.

81.—(1) Where the London school board send any child to an industrial school which is provided by them (*g*) outside London, such child shall for the purpose of the enactments relating to the metropolitan asylum managers be deemed to continue to be an inhabitant of London, and if such child is sent to any hospital of those managers he shall be deemed to have been sent from that place in London from which he was sent to the said industrial school.

(2) This section shall apply to that part of London which is not within the metropolitan asylum district (*h*) as if it were within that district, and the board of guardians of the poor law union comprising that part shall pay for such child accordingly.

Prevention of Epidemic Diseases.

Prevention of Epidemic Diseases.

Sanitary authority to execute epidemic regulations, 38 & 39 Vict. c. 55.

82.—(1) The sanitary authority of any district within which or part of which regulations issued by the Local Government Board in pursuance of section one hundred and thirty-four of the Public Health Act, 1875, set out in the first schedule to this Act (in this Act referred to as the epidemic regulations) are in force, shall superintend and see to the execution thereof (*i*), and shall appoint and pay such medical or other officers or

(*e*) **Metropolitan common poor fund.** As to the raising and application of this fund, see note to sec. 94 of the Loc. Govt. Act, 1888, *ante*. Amongst the various purposes to which it is applied, is the maintenance of patients in fever and small-pox asylums. Metropolitan Poor Act, 1867 (30 & 31 Vict. c. 6), sec. 69 (2).

(*f*) **Parochial relief.** See the Mun. Corp. Act, 1882, sec. 9 (3) (b), and note thereto, *ante*.

(*g*) **Industrial school.** The school board may, with the consent of one of Her Majesty's principal Secretaries of State, build and maintain an industrial school and a day industrial school. Elementary Education Acts, 1870 (33 & 34 Vict. c. 75), sec. 28, and 1876 (39 & 40 Vict. c. 79), secs. 15 and 16.

(*h*) **Not within metropolitan asylum district.** The only part of London not within the metropolitan asylum district is the hamlet of Penge, which for local management purposes, forms part of the Lewisham district (Met. Man. Act, 1855, sched. B., *ante*), but for poor law purposes forms part of the Croydon union. See Statement of Poor Law Unions, 1887; Parliamentary Paper C-5191.

(*i*) **Execution of epidemic regulations.** "The Local Govt. Bd. may assign to the County Council any powers and duties under the epidemic regulations made in pursuance of sec. 134 of the Pub. Hlth. Act, 1875, which they may deem it desirable should be exercised and performed by the Council.

If the Local Govt. Bd. are of opinion that any sanitary authority, in whose default the Council have power to proceed and act under the Pub. Hlth. (London) Act, 1891, is making or is likely to make default in the execution of the said regula-

persons, and do and provide all such acts, matters, and things, as may be necessary for mitigating any disease to which the regulations relate, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require.

(2) The sanitary authority may direct any prosecution or legal proceedings for or in respect of the wilful violation or neglect of any such regulation.

(3) The sanitary authority shall have power to enter (*k*) on any premises or vessel (*l*) for the purpose of executing or superintending the execution of any of the epidemic regulations.

Poor law medical officers entitled to costs of attendance on board vessels.

83.—(1) Whenever, in compliance with the epidemic regulations, any poor law medical officer performs any medical service on board any vessel (*m*), he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the poor law union for which he is appointed; and such charges shall be paid by the master of the vessel (*m*) on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

(2) Where such service is rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charge for the service with extra remuneration on account of distance, at the rate which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, and such charge shall be paid as aforesaid. Any dispute in respect of such charge may, where the charges do not exceed twenty pounds, be determined by a petty sessional court (*n*); and that court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

Local Government Board may combine sanitary authorities.

84. The Local Government Board may, if they think fit, by order authorise or require any two or more sanitary authorities to act together for the purposes of the epidemic regulations and prescribe the mode of such joint action, and of defraying the cost thereof, and generally may make any regulations necessary or proper for carrying into execution this section.

Metropolitan asylum managers a sanitary authority for prevention of epidemic diseases.

85.—(1) The metropolitan asylum managers shall within their district have for the purpose of the epidemic regulations such powers and duties of a sanitary authority as may be assigned to them by the regulations; and the Local Government Board may make regulations for that purpose and thereby provide for the adjustment of the functions of the managers relatively to those of any sanitary authorities.

(2) Subject to such regulations the metropolitan asylum managers may use any of their property, real or personal, and their staff, for the execution of any powers or duties conferred or imposed on them under this section.

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tions they may by order assign to the Council for such time as may be specified in the order such powers and duties of the sanitary authority under the regulations as they may think fit. Where any such order has been made the expenses incurred by the Council in pursuance of the order shall be recoverable from the sanitary authority in manner provided by sub-sec. 3 of sec. 101 of the Pub. Hlth. (London) Act, 1891." London Coun. Counc. (Genl. Powers) Act, 1893 (56 & 57 Vict. ch. ccxxi.), sec. 13.

(*k*) **Power to enter.** See secs. 115 and 116, *post.*

(*l*) **Premises; vessel.** These expressions are defined by sec. 141, *post.*

(*m*) **Vessel; master of vessel.** These expressions are defined by sec. 141, *post.*

(*n*) **Petty sessional court.** See note to sec. 5 (1), *ante.*

54 & 55 Vict. c. 76.

Prevention of Epidemic Diseases.

Power to let hospitals, &c.

86. Any authority or body of persons having the management and control of any hospital, infirmary, asylum, or workhouse may let the same or any part thereof to the metropolitan asylum managers, and enter into and carry into effect contracts with those managers for the reception, treatment, and maintenance therein of persons suffering from cholera or choleraic diarrhœa within the district of the managers:

Provided that the power conferred by this section shall not, without the consent of the Local Government Board, be exercised with respect to any asylum under the Metropolitan Poor Act, 1867, or any workhouse.

30 & 31 Vict. c. 6.

Repayment to sanitary authorities of certain expenses.

87. The amount expended in pursuance of the epidemic regulations by any sanitary authority in providing any building for the reception of patients or other persons shall, to such extent as may be determined by the Local Government Board, together with two-thirds of the salaries or remuneration of any officers or servants employed in any such building under this Act, be repaid to such sanitary authority from the metropolitan common poor fund (*o*) by the receiver of that fund, out of any moneys for the time being in his hands, on the precept of the said Board, to be issued after the production of such evidence in support of the expenditure as they may deem satisfactory, and the said Board may require contributions for the purpose of raising the sums so repayable.

Mortuaries, &c.

Power of local authority to provide mortuaries.

Mortuaries, &c.

88. Every sanitary authority shall provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary (*p*), and may make byelaws (*q*) with respect to the management and charges for the use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such byelaws, of any dead body received into a mortuary.

Power of justice in certain cases to order removal of dead body to mortuary.

89.—(1) Where either—

(a) the body of a person who has died of any infectious disease is retained in a room in which persons live or sleep; or

(b) the body of a person who has died of any dangerous infectious disease (*r*) is retained without the sanction of the medical officer of health or any legally qualified medical practitioner (*s*) for more than forty-eight hours, elsewhere than in a room not used at the time as a dwelling-place, sleeping-place, or work-room (*t*); or

(c) any dead body is retained in any house or room, so as to endanger the health of the inmates thereof, or of any adjoining or neighbouring house or building,

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(*o*) **Metropolitan common poor fund.** See note to sec. 80 (3), *ante*.

(*p*) **Mortuaries.** Sanitary authorities may, with the approval of the County Council, combine for the purpose of providing mortuaries. Sec. 91, *post*. The County Council are also empowered to provide one or two mortuaries for unidentified dead bodies found in London. Sec. 93, *post*.

(*q*) **Byelaws** under this Act must be made in accordance with the provisions of sec. 114, *post*. Under the corresponding provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 141, the Local Govt. Bd. have issued model byelaws (xv.) with respect to mortuaries, for the guidance of sanitary authorities.

(*r*) **Dangerous infectious disease.** See sec. 58, *ante*.

(*s*) **Legally qualified medical practitioner.** See note to sec. 21 (1), *ante*.

(*t*) **Retention of dead body.** The retention of the body of a person who has died of any dangerous infectious disease in a room used as a dwelling place, &c., without sanction, is an offence under sec. 72, *ante*.

54 & 55 Vict. c. 76.

Mortuaries, &c.

a justice may, on a certificate signed by a medical officer of health or other legally qualified medical practitioner, direct that the body be removed, at the cost of the sanitary authority, to any available mortuary, and be buried within the time limited by the justice; and may if it is the body of a person who has died of an infectious disease, or if he considers immediate burial necessary, direct that the body be buried immediately, without removal to the mortuary.

(2) Unless the friends or relations of the deceased undertake to bury and do bury the body within the time so limited, it shall be the duty of the relieving officer (*u*) to bury such body, and any expense so incurred shall be paid (in the first instance) by the board of guardians of the poor law union, but may be recovered by them in a summary manner (*x*) from any person legally liable to pay the expense of such burial.

(3) If any person obstructs the execution of any direction given by a justice under this section, he shall be liable to a fine not exceeding five pounds.

Power of sanitary authority to provide places for post-mortem examinations.

90.—(1) Any sanitary authority may, and if required by the county council (*z*) shall, provide and maintain a proper building (otherwise than at a workhouse) for the reception of dead bodies during the time required to conduct any post-mortem examination ordered by a coroner (*a*) or other constituted authority, and may make regulations with respect to the management of such building.

(2) Any such building may be provided in connexion with a mortuary, but this enactment shall not authorise the conducting of any post-mortem examination in a mortuary.

Power to sanitary authorities to unite for providing mortuary.

91. Any sanitary authorities may, with the approval of the county council, execute their duty under this Act with respect to mortuaries and buildings for post-mortem examinations by combining for the purpose thereof, or by contracting for the use by one of the contracting authorities of any such mortuary or building provided by another of such contracting authorities, and may so combine or contract upon such terms as may be agreed upon.

Place for holding inquests.

92. The county council shall maintain and provide proper accommodation for the holding of inquests (*b*), and may by agreement with a sanitary authority provide and maintain the same in connexion with a mortuary or a building for post-mortem examinations provided by that authority, or with any building belonging to that authority, and may do so on such terms as may be agreed on with the authority.

(*u*) **Relieving officer.** This is an officer appointed by the board of guardians for the purposes of poor relief, under the consolidated order of the Poor Law Commissioners, art. 153.

(*x*) **Summary manner.** See sec. 117, *post*.

(*z*) **If required by County Council.** The power of the County Council to require the provision of a building for post-mortem examinations does not extend to the City. Sec. 133 (c), *post*.

(*a*) **Post-mortem ordered by coroner.** The Coroners Act, 1887, sec. 24, *post*, vol. ii., empowers coroners to order the removal of dead bodies to places provided by sanitary authorities for post-mortem examinations.

(*b*) **Place for holding inquests.** At the time this work was published, the London County Council (General Powers) Bill, 1897, had already passed the House of Commons, providing, by clause 48, that "Sec. 92 of the Pub. Hlth. (London) Act, 1891, shall be deemed to have authorised and shall authorise sanitary authorities, upon such terms as may be agreed upon between such sanitary authorities and the Council, to provide and maintain accommodation for the holding of inquests in connection with a mortuary or other building belonging to such authority."

54 & 55 Vict. c. 76.

Mortuaries, &c.

Mortuary for unidentified bodies.

93.—(1) The county council may provide and fit up in London one or two suitable buildings to which dead bodies found in London and not identified, together with any clothing, articles, and other things found with or on such dead bodies, may on the order of a coroner be removed, and in which they may be retained and preserved with a view to the ultimate identification of such dead bodies.

(2) A Secretary of State may make regulations as to—

(a) the manner in which and conditions subject to which any such bodies shall be removed to any such building, and the payments to be made at such building to persons bringing any unidentified dead body for reception; and

(b) the fees and charges to be paid upon the removal or interment of any such dead body which has been identified after its reception, and the persons by whom such fees and payments are to be made, and the manner and method of recovering the same; and

(c) the disposal and interment of any such bodies.

(3) The county council may provide at the said buildings all such appliances as they think expedient for the reception and preservation of bodies, and may make regulations (subject to the provisions aforesaid) as to the management of the said buildings and the bodies therein, and as to the conduct of persons employed therein or resorting thereto for the purpose of identifying any body.

(4) Subject to and in accordance with such regulations as may be made by a Secretary of State, any such body found in London may (on the order in writing of a coroner holding or having jurisdiction to hold the inquest on the same) be removed to any building provided under this section, and subject as aforesaid the inquest on any such body shall be held by the same coroner and in the same manner as if the said building were within the district of such coroner.

Byelaws as to Houses let in Lodgings.

Byelaws as to Houses let in Lodgings.

Power of sanitary authority to make byelaws as to lodging-houses.

94.—(1) Every sanitary authority shall make and enforce such byelaws (*c*) as are requisite for the following matters; (that is to say,)

(a) for fixing the number of persons who may occupy a house or part of a house which is let in lodgings (*d*) or occupied by members of more than one family, and for the separation of the sexes in a house so let or occupied:

(b) for the registration of houses so let or occupied:

(*c*) **Byelaws** See sec. 114, *post*. Model byelaws (xiii.) relating to houses let in lodgings have been issued by the Local Govt. Bd. for the use of sanitary authorities under the corresponding provisions of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 90.

(*d*) **Lodgings**. There is no definition of this expression in this Act. "For the purposes of the Representation of the People Act, 1867, . . . the term 'lodgings' shall include any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house." Parly. and Mun. Registration Act, 1878 (41 & 42 Vict. c. 26), sec. 5. The leading cases on that section are *Bradley* v. *Baylis*, *Morfee* v. *Novis*, and *Kirby* v. *Biffen*, 8 Q. B. D. 195; 51 L. J. Q. B. 183; and *Ancketill* v. *Baylis*, 10 Q. B. D. 587; 52 L. J. Q. B. 109, where the meaning of the terms "lodgings" and "lodger" are fully discussed.

Where a byelaw of a local board required the registration of lodging-houses, and defined the expression "lodging-house" to mean "a house or part of a house occupied by members of more than one family," it was held that the byelaw was reasonable, and that a person who occupied part of her house herself, and let four rooms to another person with his family, was the "landlord" of a "lodging-house" within the meaning of the byelaw. *Roots* v. *Beaumont*, 51 J. P. 197.

(c) for the inspection of such houses:
(d) for enforcing drainage for such houses, and for promoting cleanliness and ventilation in such houses:
(e) for the cleansing and lime-washing at stated times of the premises:
(f) for the taking of precautions in case of any infectious disease.

54 & 55 Vict. c. 76.

(2) This section shall not apply to common lodging-houses within the Common Lodging Houses Act, 1851, or any Act amending the same (*e*).

14 & 15 Vict. c. 28. 16 & 17 Vict. c. 41.

Tents and Vans.

Tents and Vans.

Tents and vans used for human habitation.

95.—(1) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious or dangerous to health (*f*), or is so overcrowded as to be injurious or dangerous to the health of the inmates, whether or not members of the same family, shall be a nuisance liable to be dealt with summarily under this Act (*g*).

(2) A sanitary authority may make byelaws (*h*) for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connexion with the same.

(3) Where any person duly authorised by a sanitary authority or by a justice has reasonable cause to suppose either—

(a) that any tent, van, shed, or similar structure used for human habitation is in such a state or so overcrowded as aforesaid, or that there is any contravention therein of any byelaw made under this section; or
(b) that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disease (*i*),

he may enter by day (*k*) such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether such tent, van, shed, or structure is in such a state or so overcrowded as aforesaid, or whether there is therein any such contravention, or a person suffering from a dangerous infectious disease, and the provisions of this Act with respect to the entry into any premises by an officer of the sanitary authority shall apply to the entry by any person duly authorised as aforesaid.

(4) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of Her Majesty's naval or military forces.

Underground Rooms.

Underground Rooms.

Provisions as to the occupa-

96.—(1) Any underground room (*l*), which was not let or occupied

(*e*) **Common Lodging Houses Act, 1851.** *Post*, vol. ii.
(*f*) **Nuisance or injurious or dangerous to health.** See note to sec. 2 (a), *ante*.
(*g*) **Nuisance liable to be dealt with summarily.** See secs. 3—14, *ante*.
(*h*) **Byelaws.** See sec. 114, and note thereto, *post*.
(*i*) **Dangerous infectious disease.** See sec. 58, *ante*. Notice of the occurrence of an infectious disease in a tent, van, or shed must be sent immediately to the sanitary authority. Sec. 55 (7), *ante*.
(*k*) **Enter by day,** i.e., from 6 a.m. to 6 p.m Sec. 141, *post*. See also sec. 115, *post*.
(*l*) **Underground rooms.** For provisions as to the lighting and ventilation of the basements of domestic buildings erected after January 1st, 1895, see the London Building Act, 1894, sec. 40, *post*, p. 406. Under that Act every habitable room is required to be constructed at least eight feet six inches in height, and every basement room of

54 & 55 Vict. c. 76.

Underground Rooms.

tion of underground rooms as dwellings.

separately as a dwelling before the passing of this Act, shall not be so let or occupied unless it possesses the following requisites; that is to say,

(a) unless the room is in every part thereof at least seven feet high measured from the floor to the ceiling, and has at least three feet of its height above the surface of the street or ground adjoining or nearest to the room: provided that, if the width of the area hereinafter mentioned is not less than the height of the room from the floor to the said surface of the street or ground, the height of the room above such surface may be less than three feet, but it shall not in any case be less than one foot, and the width of the area need not in any case be more than six feet;

(b) unless every wall of the room is constructed with a proper damp course, and, if in contact with the soil, is effectually secured against dampness from that soil;

(c) unless there is outside of and adjoining the room and extending along the entire frontage thereof and upwards from six inches below the level of the floor thereof an open area properly paved at least four feet wide in every part thereof: provided that in the area there may be placed steps necessary for access to the room, and over and across such area there may be steps necessary for access to any building above the underground room, if the steps in each case be so placed as not to be over or across any external window;

(d) unless the said area and the soil immediately below the room are effectually drained;

(e) unless, if the room has a hollow floor, the space beneath it is sufficiently ventilated to the outer air;

(f) unless any drain passing under the room is properly constructed of a gas-tight pipe;

(g) unless the room is effectually secured against the rising of any effluvia or exhalation;

(h) unless there is appurtenant to the room the use of a watercloset and a proper and sufficient ashpit (*m*);

(i) unless the room is effectually ventilated;

(j) unless the room has a fire-place with a proper chimney or flue;

(k) unless the room has one or more windows opening directly into the external air with a total area clear of the sash frames equal to as least one-tenth of the floor area of the room, and so constructed that one-half at least of each window of the room can be opened, and the opening in each case extends to the top of the window.

(2) If any person lets or occupies, or continues to let, or knowingly suffers to be occupied, any underground room contrary to this enactment, he shall be liable to a fine not exceeding twenty shillings for every day during which the room continues to be so let or occupied.

(3) The foregoing provisions shall at the expiration of six months after the commencement of this Act extend to underground rooms let or occupied separately as dwellings before the passing of this Act, except that the

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any dwelling-house having a wooden floor other than a floor constructed of solid wood bedded on concrete is required to have a sufficient space between the ground and the floor surfaces to admit of ventilation. *Ib.* sec. 70 (1) (a) and (d), *post*, p. 421.

(*m*) **Ashpit** is defined by sec. 141, *post*.

sanitary authority, either by general regulations providing for classes of underground rooms, or on the application of the owner of such room in any particular case, may dispense with or modify any of the said requisites which involve the structural alteration of the building, if they are of opinion that they can properly do so having due regard to the fitness of the room for human habitation, to the house accommodation in the district, and to the sanitary condition of the inhabitants, and to other circumstances, but any requisite which was required before the passing of this Act (*n*) shall not be so dispensed with or modified. 54 & 55 Vict. c. 76. *Underground Rooms.*

(4) The dispensations and modifications may be allowed either absolutely or for a limited time, and may be revoked and varied by the sanitary authority, and shall be recorded together with the reasons in the minutes of the sanitary authority.

(5) If the owner of any room feels aggrieved by a dispensation or modification not being allowed as regards that room, he may appeal to the Local Government Board, and that Board may refuse the dispensation or modification, or allow it wholly or partly, as if they were the sanitary authority. Such allowance may be revoked or varied by the Board, but not by the sanitary authority.

(6) Where two or more underground rooms are occupied together, and are not occupied in conjunction with any other room or rooms on any other floor of the same house, each of them shall be deemed to be separately occupied as a dwelling within the meaning of this section.

(7) Every underground room in which a person passes the night shall be deemed to be occupied as a dwelling within the meaning of this section; and evidence giving rise to a probable presumption that some person passes the night in an underground room shall be evidence, until the contrary is proved, that such has been the case.

(8) Where it is shown that any person uses an underground room as a sleeping place, it shall, in any proceeding under this section, lie on the defendant to show that the room is not separately occupied as a dwelling.

(9) For the purpose of this section the expression "underground room" includes any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

97.—(1) Any officer of a sanitary authority appointed or determined by that authority for the purpose shall, without any fee or reward, report to the sanitary authority, at such times and in such manner as the sanitary authority may order, all cases in which underground rooms are occupied contrary to this Act in the district of such authority. Enforcement of provisions as to underground rooms.

(2) Any such officer or any other person having reasonable grounds for believing that any underground room is occupied in contravention of this Act may enter and inspect the same at any hour by day (*o*); and if admission is refused to any person other than an officer of the sanitary authority the like warrant may be granted by a justice under this Act as in case of refusal to admit any such officer (*p*).

(*n*) **Requisite before passing of Act.** The regulations relating to underground rooms before the passing of this Act were contained in the Met. Man. Act, 1855, sec. 103, which is repealed by sec. 142, *post*.

(*o*) **Enter by day**, i.e., from 6 a.m. to 9 p.m., sec. 141, *post*. See also sec. 115, *post*.

(*p*) **Warrant by a justice.** See sec. 115 (3), *post*.

54 & 55 Vict. c. 76.

(3) A warrant of a justice authorising an entry into an underground room may authorise the entry between any hours specified in the warrant.

Underground Rooms.

Provision in case of two convictions for unlawfully occupying underground room.

98. Where two convictions for an offence relating to the occupation of an underground room as a dwelling have taken place within a period of three months (whether the persons convicted were or were not the same), a petty sessional court (*q*) may direct the closing of the underground room for such period as the court may deem necessary, or may empower the sanitary authority of the district permanently to close the same, in such manner as they think fit, at their own cost.

Authorities for execution of Act.

Definition of sanitary authority.

18 & 19 Vict. c. 120.
48 & 49 Vict. c. 33.
50 & 51 Vict. c. 17.

99.—(1) Subject to the provisions of this Act, the sanitary authority for the execution of this Act (in this Act referred to as "the sanitary authority") shall be as follows; (namely,)

(a) in the City of London the commissioners of sewers (*r*); and

(b) in each of the parishes mentioned in schedule (A.) to the Metropolis Management Act, 1855 (*s*), as amended by the Metropolis Management Amendment Act, 1885, and the Metropolis Management (Battersea and Westminster) Act, 1887, other than Woolwich, the vestry of the parish; and

(c) in each of the districts mentioned in schedule (B.) to the same Act (*s*) as so amended, the district board for the district; and

(d) in the parish of Woolwich the local board of health (*t*); and

(e) in any place mentioned in schedule (C.) to the Metropolis Management Act, 1855 (*s*), the board of guardians for such place or for any parish or poor law union of which it forms part, or, if there is no such board of guardians, the overseers of the poor for such place, or for the parish in which it is situate, and the said guardians and overseers respectively shall have the same powers for the purposes of this Act as a vestry or district board have under this Act, and their expenses shall be defrayed in the same manner as the expenses of the execution of the Acts relating to the relief of the poor are defrayed in the said place.

(2) The area within which this Act is executed by any sanitary authority is in this Act referred to as the district of that authority.

(3) The purposes for which a committee of a vestry or district board may be appointed under the Metropolis Management Act, 1855, and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly (*u*).

(4) Where a sanitary authority appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer (*x*)

(*q*) **Petty sessional court.** See note to sec. 5 (1), *ante*.

(*r*) **Commissioners of Sewers.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*, as to the constitution and powers of these commissioners.

(*s*) **Metropolis Management Act, 1855.** Schedules (A.) (B.) and (C.), *ante*.

(*t*) **Woolwich Local Board.** See note to sec. 238 of the Met. Man. Act, 1855, *ante*.

(*u*) **Committees.** See the Met. Man. Act, 1855, secs. 58 and 59, *ante*.

(*x*) **Empower any officer.** It would appear that the committee must direct the officer in each particular case, and cannot empower him generally to make complaints and take proceedings. See *St. Leonard's, Shoreditch* v. *Holmes*, *ante*, p. 138.

of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act. 54 & 55 Vict. c. 76.

(5) A sanitary authority may acquire and hold land for the purposes of their duties without any licence in mortmain (*y*).

Authorities for execution of Act.

Power of county council to prosecute on default of sanitary authority.

100. The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any byelaw, may institute any proceeding and do any act which the authority might have instituted or done for that purpose (*z*), and shall be entitled to recover from the sanitary authority in default all such expenses (*a*) in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

Proceedings on complaint to Local Government Board of sanitary authority.

101.—(1) Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any byelaw made in pursuance thereof, the Local Government Board, if satisfied after due inquiry (*b*) that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an order (*c*), limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the order, the order may be enforced by writ of mandamus, or the Local Government Board may appoint the county council to perform such duty (*d*).

(2) Where such appointment is made, the county council shall, for the purpose of the execution of their duties under the said appointment, have all the powers of the defaulting sanitary authority, and all expenses incurred by the county council in the execution of the said duties, together with the costs of the previous proceedings, so far as not recovered from any other person, shall be a debt from the sanitary authority in default to the county council, and shall be paid by the sanitary authority out of any moneys or rate applicable to the payment of the expenses of performing the duty in which they have made default.

(3) For the purpose of recovering such debt the county council, without prejudice to any other power of recovery (*e*), shall have the same power of levying the amount by a rate (*f*), and of requiring officers of the defaulting authority to pay over money in their hands (*g*), as the defaulting authority

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(*y*) **Licence in mortmain.** Were it not for this provision, a licence in mortmain would be required to enable the sanitary authority to acquire and hold land. Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), sec. 1.

(*z*) **County Council may institute proceeding.** This power of the County Council does not extend to cases of default by the commissioners of sewers. See secs. 133 (d), 134, and 135, *post*.

(*a*) **Recover expenses.** See sec. 117, *post*.

(*b*) **After due inquiry.** See sec. 129, *post*.

(*c*) **Shall make an order.** See *Reg* v. *Cockerell*, *post*, p. 350, for example of such an order under the repealed Sanitary Act, 1866.

(*d*) **Default of sanitary authority.** See note to sec. 82 (1), *ante*.

(*e*) **Other power of recovery.** See sec. 117, *post*.

(*f*) **Levying a rate.** See sec. 103, *post*.

(*g*) **Requiring officers to pay over.** See the Met. Man. Act, 1855, sec. 65, *ante*.

54 & 55 Vict. c. 76.

would have in the case of expenses legally payable out of a rate raised by that authority.

Authorities for execution of Act.

(4) The county council shall pay any surplus of the rate so levied to or to the order of the defaulting authority.

(5) If any loan is required to be raised for the purpose of the execution of their duties under the said appointment, the county council with the consent of the Local Government Board may raise the same, and may for that purpose borrow the required sum in the name of the defaulting authority for the same period, on the same security, and on the same terms (*h*) as that authority might have borrowed, and the principal and interest of such loan shall be a debt due from the defaulting authority, and shall be secured and may be recovered in like manner as if the loan had been borrowed by that authority.

(6) The surplus (if any) of any loan not applied for the purpose for which it is raised shall, after payment of the expenses of raising the same, be paid to or to the order of the defaulting authority, and be applied as if it were the surplus of a loan raised by that authority.

Application of Public Health Acts to Woolwich.

102.—(1) The provisions of the Public Health Acts, which are set out in the second schedule to this Act, except so far as they are superseded by this Act, shall extend to the parish of Woolwich, and to the local board of health thereof (*i*), in like manner as they apply to any urban sanitary district elsewhere, and the sanitary authority thereof, without prejudice to the existing effect of the Metropolis Management Act, 1855, and the Acts amending the same, or to the powers, duties, and liabilities of the county council and the local board of health of Woolwich under the latter Acts.

(2) The Woolwich Local Board may borrow for the purposes of this Act in like manner as if those purposes were purposes of the Public Health Acts.

Expenses of execution of Act.

103. The expenses incurred by sanitary authorities in London under this Act shall, save as otherwise in this Act mentioned, be defrayed as follows; (namely,)

In the case of the commissioners of sewers, out of their sewer rate and consolidated rate, or either of such rates (*k*);

In the case of any vestry or district board, out of their general rate (*l*);

In the case of the local board of health of Woolwich, out of the district fund or general district rate (*m*).

Expenses of metropolitan asylum board.

104.—(1) All expenses incurred by the metropolitan asylum managers (*n*) in the execution of the provisions of this Act relating to the provision and maintenance of carriages, buildings, and horses, and the conveyance in such carriages of persons suffering from any dangerous

(*h*) **Borrow on same terms.** See sec. 105, *post*.

(*i*) **Woolwich** is included in the Metropolis, but only for specific purposes. See the Met. Man. Act, 1855, sec. 238, and note thereto. It is governed by a local board, but did not come within the provisions of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), as that Act did not apply to the Metropolis. *Ib.* secs. 2 and 4.

(*k*) **Commissioners of Sewers.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.

(*l*) **General rate.** See the Met. Man. Act, 1855, sec. 161, *ante*.

(*m*) **Woolwich district fund, &c.** This fund, &c., is raised in the manner provided by the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), secs. 209—211, which are applied to Woolwich by sec. 102, *supra*, and sched. 2 of the present Act, *post*.

(*n*) **Met. Asylum Managers.** See note to sec. 44 of the Loc. Govt. Act, 1888, *ante*.

infectious disease (*o*) shall to such extent as the Local Government Board may sanction be defrayed out of the metropolitan common poor fund (*p*). 54 & 55 Vict. c. 76.

(2) Save as aforesaid, all expenses incurred by the said managers in the execution of this Act shall so far as they are not recovered from guardians in pursuance of this Act (*q*) be defrayed in the same manner as the expenses mentioned in section thirty-one of the Metropolitan Poor Act, 1867 (*r*), are to be defrayed under that section; and shall be raised and be recoverable in the same manner as expenses under that Act. *Authorities for execution of Act.* 30 & 31 Vict. c. 6.

(3) The provision of vessels and buildings in pursuance of this Act (*s*) shall be purposes for which the metropolitan asylum managers may borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts amending the same.

105.—(1) The provision of hospitals and of mortuaries under this Act, and the purposes of the epidemic regulations under this Act (*t*), shall be purposes for which vestries and district boards are authorised to borrow. Power of vestries and district boards to borrow.

(2) A sanitary authority, with the consent of the Local Government Board, may borrow for the purpose of providing, as required or authorised by this Act—

(a) sanitary conveniences, lavatories, and ashpits (*u*), and

(b) premises, apparatus, carriages, and vessels for the disinfection, destruction, and removal of infected articles (*x*), and

(c) a building for post-mortem examinations and accommodation for the holding of inquests (*y*).

(3) The purposes for which a sanitary authority are authorised under this Act to borrow (*z*) shall be purposes for which that authority may borrow under the Acts relating to the execution of the other duties of that authority (*a*), and, where the consent of the Local Government Board is required and given to any such loan, the consent of any other authority shall not be required.

(*o*) **Provision of carriages, &c.** See sec. 79, *ante*.

(*p*) **Met. common poor fund.** See note to sec. 94 of the Loc. Govt. Act, 1888, *ante*.

(*q*) **Recovered from guardians.** See sec. 80, *ante*.

(*r*) **Expenses of Metropolitan Poor Act, 1867, sec. 31.** These expenses are defrayed by contributions from the unions and parishes forming the district. *Ib.* The sums contributed are assessed on and contributed by them respectively in proportion to their annual rateable value. *Ib.* sec. 55.

(*s*) **Provision of vessels and buildings.** See sec. 79, *ante*.

(*t*) **Hospitals, mortuaries, epidemic regulations.** As to power to provide hospitals, see sec. 75, *ante*, and mortuaries, sec. 88, *ante*; and as to epidemic regulations, see secs. 82—87, *ante*.

(*u*) **Sanitary conveniences, lavatories, ashpits.** See secs. 44 and 45, *ante*.

(*x*) **Disinfection.** See sec. 59, *ante*.

"The purposes for which under section 105 sub-section (2) of the Public Health (London) Act 1891 vestries of parishes and boards of works for districts under the Metropolis Management Act 1855 and the Acts amending the same and also the Woolwich Local Board are empowered to borrow shall extend to and include the purposes of providing shelter or house accommodation for persons removed from their homes in case of infectious disease." London Coun. Counc. (Genl. Powers) Act, 1896 (59 & 60 Vict. ch. clxxxviii.), sec. 32.

(*y*) **Post-mortem examinations; inquests.** See secs. 90 and 92, *ante*.

(*z*) **Authorised under this Act to borrow.** See note to sec. 32, *ante*.

(*a*) **Acts relating to other duties.** See Met. Man. Act, 1855, secs. 183—191, *ante*, as to vestries and district boards. As to the Commissioners of Sewers of the City, see note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*, and of the Woolwich Local Board, see sec. 102, *ante*, and sched. 2 of the present Act, *post*.

54 & 55 Vict. c. 76.

Authorities for execution of Act.

Appointment of medical officers of health.

106.—(1) Every sanitary authority shall appoint one or more medical officers of health for their district (*b*).

(2) The same person may, with the sanction of the Local Government Board, be appointed medical officer of health for two or more districts, by the sanitary authorities of such districts; and the Local Government Board shall prescribe the mode of such appointment and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities.

(3) Every person appointed or re-appointed after the commencement of this Act as medical officer of health of a district shall (except during the two months next after the time of his appointment, or except in cases allowed by the Local Government Board) reside in such district or within one mile of the boundary thereof, and, if while not so residing as required by this enactment he assumes to act or receives any remuneration as such medical officer of health, he shall cease to hold the office.

(4) A medical officer of health may exercise any of the powers with which a sanitary inspector is invested (*c*).

(5) The annual report of a medical officer of health to the sanitary authority shall be appended to the annual report of the sanitary authority (*d*).

Appointment of sanitary inspectors.

107.—(1) Every sanitary authority shall appoint an adequate number of fit and proper persons as sanitary inspectors (*e*), and may distribute among them the duties to be performed by sanitary inspectors, and every such inspector shall be a person qualified and competent by his knowledge and experience to perform the duties of his office.

(2) Where the Local Government Board, on a representation from the county council, and after local inquiry (*f*), are satisfied that any sanitary authority have failed to appoint a sufficient number of sanitary inspectors, the Board may order the authority to appoint such number of additional

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(*b*) **Medical officers of health.** The appointment, tenure of office, salary, duties, and qualifications of medical officers of health are subject to the provisions of secs. 108 and 139, *post*, and the Sanitary Officers (London) Order, 1891, *post*, p. 374. In addition to the duties there prescribed, any person liable to pay house duty may require the medical officer of health of the district in which the house is situated to certify whether the house is a lodging-house or artisan's dwelling, so as to entitle such person to a reduction of inhabited house duty. Customs and Inland Revenue Act, 1890 (53 Vict. c. 8), sec. 26 (2). It is also the medical officer of health's duty to report as to unhealthy areas and dwellings. The Housing of the Working Classes Act, 1890, secs. 5, 30, 31, and 38, *post*, vol. ii.

As to temporary arrangement for the performance of the duties of a medical officer of health, see sec. 109, *post*. He, in common with other officers of the sanitary authority, is protected from personal liability for anything done *bonâ fide* in the execution of this Act. Sec. 124, *post*.

(*c*) **Powers of sanitary inspector.** See sec. 107 (3), *post*, and the Sanitary Officers (London) Order, 1891, arts. 19 and 20, *post*, p. 378.

(*d*) **Annual report.** Every medical officer is required to make an annual report to the sanitary authority up to December 31st in each year. The Sanitary Officers (London) Order, 1891, art. 18 (15), *post*, p. 377. Every vestry and district board is required to make, in the month of June in each year, an account in abstract and report, and to send a copy to the County Council. Met. Man. Act, 1855, sec. 198, *ante*.

(*e*) **Sanitary inspectors.** The appointment, tenure of office, salary, duties, and qualifications of sanitary inspectors, are subject to the provisions of secs. 108 and 139, *post*, and the Sanitary Officers (London) Order, 1891, *post*, p. 374. As to temporary arrangement for the performance of the duties of a sanitary inspector, see sec. 109, *post*. He is protected from personal liability for anything done *bonâ fide* in the execution of this Act, by sec. 124, *post*.

(*f*) **Local inquiry.** See sec. 129, *post*.

sanitary inspectors and to allow them such remuneration as the order directs, and the sanitary authority shall comply with the order. 54 & 55 Vict. c. 76.

Authorities for execution of Act.

(3) The sanitary inspectors shall report to the sanitary authority the existence of any nuisances; and the sanitary authority shall cause a book to be kept in which shall be entered all complaints made of any infringement of the provisions of this Act or of any byelaws made thereunder, or of nuisances; and every such inspector shall forthwith inquire into the truth or otherwise of such complaints, and report upon the same, and such report shall be laid before the sanitary authority at their next meeting, and together with the order of the sanitary authority thereon shall be entered in a book, which shall be kept at their office, and shall be open at all reasonable times to the inspection of any inhabitant of the district, and of any officer either generally or specially authorised for the purpose by the county council; and it shall be the duty of such inspector, subject to the direction of the sanitary authority, or of a committee thereof (*g*), to make complaints before justices and take legal proceedings for the punishment of any person for any offence under this Act or any such byelaws.

Provisions as to medical officers and sanitary inspectors.

108.—(1) Subject to the provisions of this Act as to existing officers (*h*) the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office (*i*) of every medical officer of health and sanitary inspector, and one-half of the salary of every such medical officer and sanitary inspector shall be paid by the county council out of the Exchequer contribution account in accordance with section twenty-four of the Local Government Act, 1888 (*k*), and that section shall be construed as if in sub-section two thereof the reference to the Public Health Act, 1875, included a reference to this Act. 51 & 52 Vict. c. 41.

(2) Provided that—

(a) A medical officer of health shall be legally qualified for the practice of medicine, surgery, and midwifery (*l*), and also either be registered in the medical register as the holder of a diploma in sanitary science, public health, or state medicine under section twenty-one of the Medical Act, 1886, or have been during three consecutive years preceding the year one thousand eight hundred and ninety-two a medical officer of a district or combination of districts in London or elsewhere with a population according to the last published census of not less than twenty thousand, or have before the passing of the Local Government Act, 1888, been for not less than three years a medical officer or inspector of the Local Government Board; and 49 & 50 Vict. c. 48.

(b) A medical officer of health shall be removable by the sanitary authority with the consent of the Local Government Board, or by that Board, and not otherwise (*m*);

(*g*) **Direction of sanitary authority or committee.** It would appear that the sanitary authority, or a committee duly appointed in that behalf, must direct the officer in each particular case, and that he cannot be empowered generally, or by a sub-committee, to make complaints or take proceedings. See *St. Leonard's, Shoreditch* v. *Holmes*, *ante*, p. 138.

(*h*) **Existing officers.** See secs. 139 and 142 (6), *post*.

(*i*) **Powers of Loc. Govt. Bd.** The powers of the Local Govt. Bd., with regard to the qualification, appointment, &c., of district medical officers, are conferred by the Poor Law Amend. Act, 1834 (4 & 5 Will. 4, c. 76), sec. 46.

(*k*) **Loc. Govt. Act, 1888.** *Ante*.

(*l*) **Legally qualified for practice of medicine, &c.** See note to sec. 21 (1), *ante*.

(*m*) **Removability of medical officer.** See the Sanitary Officers (London) Order, 1891, arts. 9, 11, 12, and 13, *post*, p. 375.

54 & 55 Vict. c. 76.

Authorities for execution of Act.

Provided that the Local Government Board shall take into consideration every representation made by the sanitary authority for the removal of any medical officer, whether based on the general interests of the district, on the conduct of such officer, or on any other ground; and

(c) Any such medical officer shall not be appointed for a limited period only (*n*); and

(d) A sanitary inspector appointed after the first day of January one thousand eight hundred and ninety-five shall be holder of a certificate of such body as the Local Government Board may from time to time approve, that he has by examination shown himself competent for such office (*o*), or shall have been, during three consecutive years preceding the year one thousand eight hundred and ninety-five, a sanitary inspector or inspector of nuisances of a district in London, or of an urban sanitary district out of London containing according to the last published census a population of not less than twenty thousand inhabitants.

Temporary arrangement for duties of medical officer or sanitary inspector.

109. A sanitary authority, where occasion requires, may, with the sanction of the Local Government Board, make any temporary arrangement for the performance of all or any of the duties of a medical officer of health or sanitary inspector, and any person appointed by virtue of any such arrangement to perform those duties, or any of them, shall, subject to the terms of his appointment, have all the powers, duties, and liabilities of a medical officer of health or sanitary inspector as the case may be.

Jurisdiction as to ships.

110.—(1) For the purposes of this Act any vessel (*p*) lying in any river or other water within the district of a sanitary authority shall (subject to the provisions of this Act with respect to the port sanitary authority of the port of London) (*q*) be subject to the jurisdiction of that authority in the same manner as if it were a house within such district.

(2) The master of any such vessel (*p*) shall be deemed for the purposes of this Act to be the occupier of such vessel.

(3) This section shall not apply to any vessel under the command or charge of any officer bearing Her Majesty's commission, or to any vessel belonging to any foreign government.

Port Sanitary Authority of Port of London.

Port sanitary authority of port of London.

Port Sanitary Authority of Port of London.

111. The mayor, commonalty, and citizens of the City of London shall continue to be the port sanitary authority of the port of London (*q*), as established for the purposes of the laws relating to the customs of the United Kingdom, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

(*n*) **Limited period.** As to temporary arrangement for the performance of the duties of a medical officer, see sec. 109, *post*.

(*o*) **Certificate of sanitary inspector.** The Sanitary Officers (London) Order, 1891, contains no directions with regard to the certificate of a sanitary inspector.

(*p*) **Vessel; master of vessel.** Defined by sec. 141, *post*.

(*q*) **Port of London.** The port of London commences at high water mark in the River Thames at Teddington Lock, in the county of Surrey, and extends down both sides of the river to an imaginary line drawn from the Pilot Mark at the entrance of Havengore Creek, in the county of Essex, and the Land's End at Warden Point, in the Isle of Sheppey, such point being the north-western limit of the port of Faversham. It also extends up and includes both sides of the River Medway as far as Coalmouth Creek and Stangate Creek. See the warrant of the Commissioners of the Treasury, dated August 1st, 1883, and published in the *London Gazette*, August 10th, 1883, p. 3966, under the authority conferred on the commissioners by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), sec. 11.

54 & 55 Vict. c. 76.

Port Sanitary Authority of Port of London.

Power of port sanitary authority of port of London. 38 & 39 Vict. c. 55.

112.—(1) The Local Government Board may by order assign to the port sanitary authority of the port of London any powers, rights, duties, capacities, liabilities, or obligations of a sanitary authority under this Act (*r*), or of a sanitary authority under the Public Health Act, 1875, and any Act extending or amending the same respectively, with such modifications and additions (if any) as may appear to the Board to be required (*s*), and the order may extend to the said port a byelaw made under this Act otherwise than by the port sanitary authority, and any such byelaw until so extended shall not extend to the said port; and the said port sanitary authority shall have the powers, rights, duties, capacities, liabilities, and obligations assigned by such order in and over all waters within the limits of the said port, and also in and over such districts or parts of districts of riparian authorities as may be specified in any such order, and the order may extend this Act, and any part thereof, and any byelaw made thereunder, to such waters and districts and parts of districts when not situate in London.

(2) The said port sanitary authority may acquire and hold land for the purposes of their constitution without any licence in mortmain (*t*).

(3) The said port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority the exercise of any powers conferred on the port sanitary authority by the order of the Board, but except in so far as such delegation extends no other authority shall exercise any powers conferred on such port sanitary authority by the order of the Board within the limits of the port of London.

(4) "Riparian authority" in this section means any sanitary authority under this Act and any sanitary authority under the Public Health Act, 1875, whose district or part of whose district forms part of or abuts on any part of the said port, and any conservators, commissioners, or other persons having authority in or over any part of the said port.

Application of Public Health Acts as to Cholera, &c.

Application of Public Health Acts as to Cholera, &c.

Powers of Local Government Board as to epidemic diseases.

113. The sections of the Public Health Acts (relating to regulations and orders of the Local Government Board with respect to cholera, or other epidemic, endemic, or infectious diseases) set out in the first schedule to this Act, shall extend to London, and shall apply in like manner as if a sanitary authority under this Act were a local authority within the meaning of those sections.

Byelaws (u).

Byelaws.

Byelaws.

114. All byelaws made by the county council or by any sanitary authority under this Act shall be made subject and according to the provisions with respect to byelaws contained in sections one hundred

(*r*) **Powers, &c., under this Act.** See sec. 23 (7), *ante*.

(*s*) **Assignment to port sanitary authority.** By Order No. 27,939, dated March 25th, 1892, the Local Govt. Bd. assigned certain powers and duties under this Act to the port sanitary authority of the port of London.

(*t*) **Licence in mortmain.** See note to sec. 99 (5), *ante*.

(*u*) **Byelaws.** The power to make byelaws conferred by any Act passed since 1889 includes the power, exercisable in the like manner and subject to the like consent and conditions, to rescind, revoke, amend, or vary them. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 32 (3). As to the limits and effect, and the general principles governing the making and validity of byelaws, see note to sec. 23 of the Mun. Corp. Act, 1882, *ante*.

54 & 55 Vict. c. 76.
38 & 39 Vict. c. 55.

and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and set forth in the first schedule to this Act; and those sections shall apply in like manner as if the county council or sanitary authority were a local authority:

Provided that the county council, in making any byelaws which will have to be observed and enforced by any sanitary authority, shall consider any representations made to the council by that authority, and not less than two months before applying to the Local Government Board for the confirmation of any such byelaws shall send a copy of the proposed byelaws to every such authority.

Legal Proceedings.

Legal Proceedings.
General provisions as to powers of entry.

115.—(1) Where a sanitary authority have by virtue of this Act power to examine or enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, they may examine or enter by any members of the authority, or by any officers or persons authorised by them, either generally or in any particular case.

(2) Where a sanitary authority, or their officers, or any persons acting under such authority, or under any of their officers, have by virtue of any enactment in this Act, a right to enter any premises, whether a building, vessel, tent, van, shed, structure, or place open or enclosed, then, subject to any special provisions contained in such enactment, the following provisions shall apply, that is to say—

(a) The person so claiming the right to enter shall, if required, produce some written document (*x*) properly authenticated on the part of the sanitary authority (*y*), showing the right of the person producing the same to enter;

(b) Any person refusing or failing to admit (*z*) any person who is authorised and claims to enter the premises shall if—

(i) the entry is for the purpose of carrying into effect an order of a court of summary jurisdiction (*a*), and either is stated in the said document to be for that purpose or is claimed by an officer of the sanitary authority, or

(ii) it is proved that the refusal or failure is with intent to prevent the discovery of some contravention of this Act or any byelaw under this Act, or

(iii) the refusal or failure is declared by the enactment conferring the right of entry to render the person refusing or failing subject to a fine,

be liable to a fine not exceeding five pounds.

(3) If a justice is satisfied by information on oath—

(a) that there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and either that reasonable notice of the intention to apply to a justice for a warrant has been given, or that the giving of notice would defeat the object of the entry, or

(*x*) **Written document.** Writing includes printing, lithography, photography, and other modes of representing or reproducing words in a visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*y*) **Properly authenticated.** See sec. 127, *post*.

(*z*) **Refusing or failing to admit.** See *Borrow* v. *Howland* and *Small* v. *Bickley*, *post*, p. 343.

(*a*) **Court of summary jurisdiction.** For meaning of this expression see note to sec. 4 of the Met. Man. Act, 1890, *ante*.

54 & 55 Vict. c. 76.

Legal Proceedings.

(b) that there is reasonable cause to believe that there is on the said premises some contravention of this Act or of any byelaw under this Act, and that an application for admission or notice of an application for the warrant would defeat the object of the entry,

the justice may by warrant (*b*) under his hand authorise the sanitary authority or their officers or other person, as the case may require, to enter the premises, and if need be by force, with such assistants as they or he may require, and there execute their duties under this Act.

(4) Any person obstructing the execution of any such warrant, or of any warrant granted by a justice in pursuance of any other provision of this Act, and authorising the entry by the sanitary authority or their officer or any other person into any premises, shall be liable to a fine not exceeding twenty pounds, or, in a case where a greater punishment is imposed by this Act or any other enactment, either to such fine or to that greater punishment.

(5) The warrant shall continue in force until the purpose for which the entry is necessary has been satisfied.

(6) Where a house or part of a house is alleged to be overcrowded so as to be a nuisance liable to be dealt with summarily under this Act (*c*), a warrant under this section may authorise an entry into such house or part of a house at any hour of the day or night specified in the warrant (*d*).

Penalty on obstructing execution of Act.

116.—(1) If any person—

(a) wilfully obstructs (*e*) any member or officer of a sanitary authority or any person duly employed in the execution of this Act, or,

(b) destroys, pulls down, injures, or defaces any byelaw, notice, or other matter put up by authority of the Local Government Board or county council, or of a sanitary authority, or any board or other thing upon which such byelaw, notice, or matter is placed or inscribed, or

(c) wilfully damages any works or property belonging to any sanitary authority,

he shall be liable to a fine not exceeding five pounds.

(2) Where the occupier of any premises (*f*) prevents the owner (*f*) thereof from obeying or carrying into effect any provision of this Act, a petty sessional court (*g*), on complaint, shall by order require such occupier

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(*b*) **Warrant.** See sched. 3, form E., *post.*

(*c*) **Overcrowding.** See secs. 2 (1) (e), 4 (3) (c), and 7, *ante.*

(*d*) **Day or night.** Without this warrant the sanitary authority can only enter by day (sec. 10, *ante*), i.e., from 6 a.m. to 9 p.m. Sec. 141, *post.*

(*e*) **Wilful obstruction.** By a byelaw of the County Council made under sec. 16 (2) (b), *ante*, every sanitary authority is bound to remove the refuse from every dwelling-house within its district at least once a week, but there is no byelaw imposing a corresponding duty on the occupier to permit the refuse to be removed. *Held*, that the refusal of an occupier to allow his refuse to be removed, though he used no force, was an obstruction within the meaning of the present section. *Borrow* v. *Howland*, 60 J. P. 391 ; 74 L. T. (N. S.) 787.

A butcher, on a Sunday afternoon, was requested to go himself, or send some one with a key to admit the inspector of nuisances to his shop, which was half a mile from his residence. He refused. *Held*, that although Sunday afternoon might, under some circumstances, be a reasonable time, the butcher had not "in any manner obstructed or impeded" the inspector within the meaning of the Nuisances Removal Act, 1863 (26 & 27 Vict. c. 117), sec. 3. *Small* v. *Bickley*, 39 J. P. 422 ; 32 L. T. (N. S.) 726.

(*f*) **Premises; owner.** These expressions are defined by sec. 141, *post.*

(*g*) **Petty sessional court.** See note to sec. 5 (1), *ante.*

54 & 55 Vict. c. 76.

Legal Proceedings.

to permit the execution of any works which appear to the court necessary for the purpose of obeying or carrying into effect such provision of this Act; and if within twenty-four hours after service on him of the order such occupier fails to comply therewith, he shall be liable to a fine not exceeding five pounds for every day during the continuance of such non-compliance.

(3) If the occupier of any premises, when requested by or on behalf of the sanitary authority to state the name and address of the owner of the premises, refuses or wilfully omits to disclose or wilfully misstates the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a fine not exceeding five pounds.

Summary proceedings for offences, expenses, &c.

117.—(1) All offences, fines, penalties, forfeitures, costs, and expenses under this Act or any byelaw made under this Act directed to be prosecuted or recovered in a summary manner, or the prosecution or recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (*h*).

(2) Proceedings for the recovery of a demand not exceeding fifty pounds, which a sanitary authority or any person are or is empowered to recover in a summary manner, may, at the option of the authority or person, be taken in the county court (*i*) as if such demand were a debt.

(3) A proceeding under this Act shall not be taken by the county council against a sanitary authority save with the sanction of the Local Government Board, unless such proceeding is for the recovery of expenses or of money due from the sanitary authority to the council.

Evidence by defendant.

118. Any person charged with an offence under this Act, and the wife or husband of such person, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Application of fines and disposal of things forfeited.

119.—(1) All fines recovered under this Act shall, notwithstanding anything in any other Act, be paid to the sanitary authority and applied by them in aid of their expenses in the execution of this Act, except that any fine imposed on the sanitary authority shall be paid to the county council.

(2) All things forfeited under this Act may be sold or disposed of in such manner as the court ordering the forfeiture may direct.

Proceedings in certain cases against nuisances.

120.—(1) Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons (*k*), the

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(*h*) **Summary Jurisdiction Acts.** Proceedings under these Acts must be commenced within six calendar months from the time when the matter of complaint arose. Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 11. As to when the time begins to run, see note to sec. 107 of the Met. Man. Amend. Act, 1862, *ante*; and for the manner of proceeding, see note to sec. 227 of the Met. Man. Act, 1855, *ante*. As to when an appeal lies to quarter sessions, see sec. 125, *post*.

(*i*) **County court.** The general rule is that where an obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy is exclusive of all others. See *St. Pancras Vestry* v. *Batterbury*, and other cases cited *ante*, p. 202.

The proceedings, whether in the county court, or before a court of summary jurisdiction, must be commenced within six months from the time the amount becomes due. *Hammersmith Vestry* v. *Lowenfeld*, *ante*, p. 287.

(*k*) **Two or more persons.** The acts of two or more persons may, taken together, constitute such a nuisance that the Court will restrain all from doing the acts constituting the nuisance, although the act of one of them, if taken alone, would not amount to a nuisance. *Lambton* v. *Mellish* (1894), 3 Ch. 163; 63 L. J. Ch. 929. That case related to a nuisance caused by the noise of two organs belonging to different persons. See also *Hendon Union* v. *Bowles*, 34 J. P. 19; 20 L. T. (N. S.) 609.

sanitary authority or other complainant may institute proceedings against any one of such persons, or may include all or any two or more of them in one proceeding; and any one or more of such persons may be ordered to abate the nuisance, so far as it appears to the court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which in the opinion of the court contribute to the nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to the court may appear fair and reasonable. 54 & 55 Vict. c. 76. *Legal Proceedings.*

(2) Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

(3) Where some only of the persons by whose act or default any nuisance has been caused have been proceeded against under this Act, they shall, without prejudice to any other remedy, be entitled to recover in a summary manner from the other persons who were not proceeded against a proportionate part of the costs of and incidental to such proceedings and abating such nuisance, and of any fine and costs ordered to be paid by the court in such proceedings.

(4) Whenever in any proceeding under the provisions of this Act relating to nuisances it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description.

121. Any costs and expenses which are recoverable under this Act by a sanitary authority from an owner of premises may be recovered from the occupier for the time being (*l*) of such premises; and the owner shall allow the occupier to deduct any money which he pays under this enactment out of the rent from time to time becoming due in respect of the premises, as if the same had been actually paid to the owner as part of the rent (*m*): Provided that— Recovery of expenses by sanitary authority from owner or occupier.

(a) the occupier shall not be so required to pay any further sum than the amount of rent which either is for the time being due from him, or which after demand from him of such costs or expenses, and notice not to pay (*n*) any rent without first deducting the same, becomes payable by him, unless he refuses, on the application of the sanitary authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable (*o*); but the burden of proof that the sum demanded from any such occupier is greater than the aforesaid amount of rent shall lie on such occupier; and

(*l*) **Occupier for the time being.** See *Bermondsey Vestry* v. *Ramsey*, *ante*, p. 260.

(*m*) **Deduction by occupier.** The money must have been actually paid by the occupier to entitle him to make the deduction. *Ryan* v. *Thompson*, *ante*, p. 260. As to the deduction by the tenant from the landlord of costs and expenses incurred in abating a nuisance in compliance with a nuisance order, see *Gebhardt* v. *Saunders*, *ante*, p. 286.

(*n*) **Notice not to pay.** The notice must be in writing, duly authenticated. Sec. 127, *post*.

(*o*) **Refuses name and address.** Refusal to disclose the name and address of the "owner," on the request of the sanitary authority, renders the occupier liable to a fine. Sec. 116 (3), *ante*.

54 & 55 Vict. c. 76.

(b) nothing in this section shall affect any contract between any owner and occupier of any premises whereby the occupier agrees to pay or discharge all rates, dues, and sums of money payable in respect of such premises, or shall affect any contract whatsoever between landlord and tenant (*p*).

Legal Proceedings.

Justice to act though member of sanitary authority or liable to contribute.

122. A judge or justice of the peace shall not be incapable of acting in cases arising under this Act by reason of his being a member of any sanitary authority, or by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any rate or fund, out of which any expenses incurred by a sanitary authority are to be defrayed (*q*).

Appearance of sanitary authority in legal proceedings.

123. The county council or a sanitary authority may appear before any court or in any legal proceeding by their clerk (*r*), or by any officer or member authorised (*s*) generally or in respect of any special proceeding by resolution of such council or authority; and their clerk, or any officer or member so authorised, shall be at liberty to institute and carry on any proceeding which the county council or sanitary authority are authorised to institute and carry on under this Act.

(*p*) **Contract between owner and occupier.** A lessee who covenants to pay "all taxes, rates, duties, assessments, and impositions . . . which now are or shall be . . . assessed or imposed on or in respect of the . . . premises," is liable as between himself and his landlord, to pay the cost incurred by the latter in abating a nuisance arising from the drains of the premises in compliance with a notice from the sanitary authority. *Brett* v. *Rogers* (1897), 1 Q. B. 525; 66 L. J. Q. B. 287. To the like effect is *Smith* v. *Robinson* (1893), 2 Q. B. 53; 62 L. J. Q. B. 509. See also the cases cited in note to sec. 96 of the Met. Man. Amend. Act, 1862, *ante*.

(*q*) **Justice not incapable of acting.** Under the Public Health Act, 1875 (38 & 39 Vict. c. 55), notwithstanding the corresponding provisions of sec. 258 of that Act, it has been held that where justices who are members of a sanitary authority either take part in authorising a prosecution under the Act, or are present at the meeting of the authority at which such prosecution is determined upon, they are thereby disqualified from assisting at the hearing of the summons. *Reg.* v. *Milledge*, 4 Q. B. D. 332; 48 L. J. M. C. 139; *Reg.* v. *Lee*, 9 Q. B. D. 394; 47 J. P. 118. The same rule has been followed under a similar provision of the Salmon Fishery Act, 1865 (28 & 29 Vict. c. 121), sec. 61. *Reg.* v. *Henley* (1892), 1 Q. B. 504; 61 L. J. M. C. 135.

The owner of a farm received by agreement the sewage of a district, and disposed of it on his farm. On a dispute arising with the local board, who took legal proceedings to enforce the agreement, he turned the sewage into a river, for which he was summoned by the conservators. The chairman of the local board, who had taken an active part in its proceedings, and was a magistrate, was held to be disqualified from acting in the case, notwithstanding a similar provision of the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115). *Reg.* v. *Meyer*, 1 Q. B. D. 173; 40 J. P. 645. Under a similar provision of a local Act, it was held that a member of a town council, who was also a magistrate, was not disqualified from adjudicating on a summons for arrears of rates. *Reg.* v. *Handsley*, 8 Q. B. D. 383; 51 L. J. M. C. 137. Three justices, who were members of a town council, and as such had taken an active part in making an order under the Dogs Act, 1871 (34 & 35 Vict. c. 56), sat to hear a complaint of non-observance of the order. They had not taken any part in ordering the prosecution. *Held*, that they had no such interest in the subject-matter as to oust their jurisdiction. *Reg.* v. *Huntingdon Justices*, 4 Q. B. D. 522; 43 J. P. 767.

See further as to the disqualification of justices on account of bias, or personal or pecuniary interest, *Leeson* v. *General Council of Medical Education*, 43 Ch. D. 366; 59 L. J. Ch. 233; *Reg.* v. *Gaisford* (1892), 1 Q. B. 381; 61 L. J. M. C. 50; *Ex parte Workington Overseers* (1894), 1 Q. B. 416; 58 J. P. 381; *Reg.* v. *Huggins* (1895), 1 Q. B. 563; 64 L. J. M. C. 149.

(*r*) **Appearance by clerk.** See *Reg.* v. *London JJ.*, *Ex parte Dewey*, *post*, vol. ii., p. 1192.

(*s*) **Officer or member authorised.** Under the corresponding provision of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 259, it was held that a local board had no power to delegate prosecutions, under certain specified clauses of a local Act, to the police, who were not officers of the board, nor under their control. *Kyle* v. *Barbor*, 52 J. P. 725; 58 L. T. (N. S.) 229.

54 & 55 Vict. c. 76.

Legal Proceedings.

Protection of sanitary authority and their officers from personal liability.

124. No matter or thing done, and no contract entered into by the county council or any sanitary authority, and no matter or thing done by any member of such council or authority, or by any officer of such council or authority or other person whomsoever acting under the direction of such council or authority, shall, if the matter or thing were done or the contract were entered into bonâ fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by the county council or any such authority, member, officer, or other person acting as last aforesaid, shall be borne and repaid out of the rate applicable by that council or authority to the purposes of this Act:

Provided that nothing in this section shall exempt any member of the county council or of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such council or authority, and which that member authorised or joined in authorising.

Appeal.

Appeal.

Appeal to quarter sessions.

125. Any person who deems himself aggrieved by any conviction or order made by a court of summary jurisdiction (*t*) on determining any information or complaint under this Act may, save as otherwise provided in this Act (*u*), appeal therefrom to a court of quarter sessions (*x*).

Provision as to appeals to county council.

18 & 19 Vict. c. 120.

126. Any appeal to the county council (*y*) against a notice or act of a sanitary authority under this Act shall be conducted in accordance with sections two hundred and eleven and two hundred and twelve of the Metropolis Management Act, 1855, which sections, as modified by the Local Government Act, 1888, are set out in the first schedule to this Act.

Notices.

Notices.

Authentication of notices, &c.

127.—(1) Notices, orders, and other such documents under this Act shall be in writing (*z*); and notices and documents other than orders, when issued by the county council or a sanitary authority, shall be sufficiently authenticated if signed by their clerk (*a*) or by the officer by whom the same are given or served.

(*t*) **Court of summary jurisdiction.** See note to sec. 21 (3) (b) of the Mun. Corp. Act, 1882, *ante*, for the meaning of this expression.

(*u*) **Save as otherwise provided.** There is no appeal against a nuisance order, unless it is or includes a prohibition or closing order, or requires the execution of structural works. Sec. 6 (2), *ante*.

(*x*) **Appeal to quarter sessions.** For the time and mode of appealing, see note to sec. 227 of the Met. Man. Act, 1855, *ante*. On a criminal matter there is no appeal unless there is a conviction. *Reg.* v. *London JJ.*, *Ex parte Fulham Vestry*, *ante*, p. 205.

(*y*) **Appeal to County Council.** As to matters on which appeal may be made to the County Council under this Act, see secs. 37 (5), 41 (3), and 43 (3), *ante*. No appeal lies from the commissioners of sewers to the County Council. Sec. 133, *post*.

(*z*) **Writing** includes printing, lithography, photography, and other modes of representing or reproducing words in a visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*a*) **Signed by their clerk.** Under a similar provision of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 266, a printed signature of the clerk of a local board to a notice under sec. 150 of that Act was held to be sufficient. *Brydges* v. *Dix*, 7 T. L. R. 215. As to signature by a stamp, see *Osgood* v. *Nelson*, L. R. 5 H. L. at p. 648; 41 L. J. Q. B. at p. 337; *Blades* v. *Lawrence*, L. R. 9 Q. B. 374; 43 L. J. Q. B. 133. As to a lithographed signature, see *Reg.* v. *Cowper*, 24 Q. B. D. 533; 59 L. J. Q. B. 265. As to signature by a subordinate in the clerk's name, see *France* v. *Dutton* (1891), 2 Q. B. 208; 60 L. J. Q. B. 488.

54 & 55 Vict. c. 76.

(2) Orders shall be under the seal of the council or authority duly authenticated.

Notices.

Service of notices.

128.—(1) Any notice, order, or other document (*b*) required or authorised to be served under this Act may be served by delivering the same or a true copy thereof either to or at the usual or last known residence (*c*) in England of the person to whom it is addressed, or, where addressed to the owner (*d*) or occupier of premises, then to some person on the premises, or, if there is no person on the premises who can be so served, then by fixing the same or a true copy thereof on some conspicuous part of the premises (*d*); it may also be served by sending the same or a true copy thereof by post (*e*) addressed to a person at such residence or premises as above mentioned.

(2) Any notice required or authorised for the purposes of this Act to be served on a sanitary authority or on the county council shall be deemed to be duly served if in writing delivered at, or sent by post to, the office of the authority or council, addressed to such authority or council, or their clerk.

(3) Any notice by this Act required to be given to or served on the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given or served, without further name or description.

Miscellaneous Provisions.

Inquiries by Local Government Board. 38 & 39 Vict. c. 55.

Miscellaneous Provisions.

129. Sections two hundred and ninety-three to two hundred and ninety-six of the Public Health Act, 1875, which are set forth in the first schedule to this Act, shall apply to all inquiries which the Local Government Board may make in pursuance of or for the purposes of this Act.

Forms.

42 & 43 Vict. c. 49.

130. The forms in the third schedule to this Act, or forms to the like effect, varied as circumstances may require, may, unless other forms are prescribed under the Summary Jurisdiction Act, 1879, be used and shall be sufficient for all purposes.

Provision for apportionment of certain expenses between hamlet of Penge and

131. Where the whole or any part of any expense incurred by the Lewisham district board of works, in pursuance of the epidemic regulations, may, under this Act, be repaid to that board out of the metropolitan common poor fund (*f*), the amount to be so repaid when ascertained shall

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(*b*) **Notice, order, or other document.** A summons to answer a complaint by a sanitary authority under this Act, alleging a nuisance, is a "document" within the meaning of these words. Such a summons may therefore be served in any of the modes mentioned in the present section, and may be addressed to the "owner" of the premises without any further description. *Reg.* v. *Mead* (1894), 2 Q. B. 124; 63 L. J. M. C. 128.

(*c*) **Residence.** Under a similar provision of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 267, it was held that delivery of a notice at a person's chief place of business satisfies the words of that section "delivering the same at the residence of the person." *Newport (Mayor, &c., of)* v. *Lang*, 57 J. P. 199.

(*d*) **Owner; premises.** These expressions are defined by sec. 141, *post*.

(*e*) **By post.** Service by post is deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 26. Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 267, it was held that in order to prove service of a notice through the post, it is necessary to show that the letter was prepaid. *Walthamstow Urb. Dist. Counc.* v. *Henwood*, 66 L. J. Ch. 31; 61 J. P. 23.

(*f*) **Metropolitan common poor fund.** See sec. 87, *ante*.

be apportioned between the hamlet of Penge (*g*) and the remainder of the Lewisham district in proportion to the rateable value of such hamlet and remainder, according to the valuation lists in force at the date of the apportionment, and the amount apportioned to the hamlet of Penge shall be repaid to the district board by the board of guardians for the Croydon union out of the common fund of the union, in pursuance of a precept of the Local Government Board to be issued after the like proceedings and in the like manner as in the case of a repayment from the metropolitan common poor fund; and the amount apportioned to the remainder of the Lewisham district shall be repaid to the district board out of the metropolitan common poor fund.

remainder of Lewisham district.

132. This Act shall (save as otherwise expressly provided) extend only to London (*h*):

Extent of Act.

Provided that this Act shall extend to places elsewhere so far as is necessary for giving effect to any provisions thereof in their application to London and to any places to which such provisions are expressly applied (*i*).

City of London.

City of London.

133. In the application of this Act to the City of London the following modifications shall be made:

Application of Act to City.

(a) There shall be no appeal under this Act from the commissioners of sewers (*k*) to the county council:

(b) The byelaws made by the county council under this Act shall not extend to the City:

(c) The county council shall not have power under this Act to require the commissioners of sewers to provide and maintain a building for post-mortem examinations:

(d) The powers of the county council under this Act to proceed in case of default of a sanitary authority shall not extend to the commissioners of sewers.

134. Where it is proved to the satisfaction of the Local Government Board that the commissioners of sewers (*k*) have made default in doing their duty in relation to nuisances under this Act, the Board may authorise any officer of police of the City of London to institute any proceeding which the commissioners might institute with regard to such nuisances, and that officer may recover from the commissioners in a summary manner or in the county court or High Court any expenses incurred by him, and not paid by the person proceeded against. Such officer of police shall not for the purpose of this section be at liberty to enter any house (*l*) or part of a house used as a dwelling of any person without either such person's consent, or the warrant of a justice (*m*).

Power of City police to proceed in certain cases against nuisances.

(*g*) **Penge.** The hamlet of Penge is in the Lewisham district for local management purposes. Met. Man. Act, 1855, sched. (B.), *ante*. But for poor law purposes it forms part of the Croydon union. See Statement of Poor Law Unions, 1887; Parliamentary Paper, C-5191.

(*h*) **London,** i.e., the administrative county of London. Sec. 141, *post*.

(*i*) **Places elsewhere.** As to cases in which the Act extends to places beyond London, see secs. 14, 21 (4), 71 (6), 79, 81, 111, and 112, *ante*.

(*k*) **Commissioners of Sewers.** See sec. 99 (1) (a), *ante*.

(*l*) **House** is defined by sec. 141, *post*.

(*m*) **Warrant of justice.** This may be obtained under sec. 115 (3), *ante*.

54 & 55 Vict. c. 76.

City of London.

Proceedings on complaint to Local Government Board of default of commissioners of sewers.

135.—(1) Where complaint is made to the Local Government Board that the commissioners of sewers (*n*) have made default in executing or enforcing any provisions of this Act, the Local Government Board, if satisfied, after due inquiry (*o*), that those commissioners have been guilty of the alleged default, shall make an order (*p*) limiting a time for the performance of their duty in the matter of such complaint. If the duty is not performed by the time limited in the order, the order may be enforced by writ of mandamus, or the Local Government Board may appoint some person to perform the duty, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending the performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the commissioners of sewers, and any order made for the payment of such expenses and costs may be removed into the High Court, and enforced as an order of that court.

(2) Any person so appointed shall, in the performance and for the purposes of the said duty, be invested with all the powers of the commissioners of sewers other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may by order change any person so appointed.

(3) Any sum specified in an order of the Local Government Board for payment of the expenses of performing the duty of the commissioners of sewers, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by those commissioners, and to be a debt due from them, and payable out of any moneys in their hands or the hands of their officers, or out of any rate applicable to the payment of any expenses properly incurred by the commissioners (*q*) (which rate is in this section referred to as "the local rate"). If the commissioners refuse to pay any such debt for a period of fourteen days after demand, the Local Government Board may by order empower any person to levy, by and out of the local rate, such sum (to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt, and all expenses incurred in consequence of the non-payment thereof.

(4) Any person so empowered shall have the same powers of levying the local rate, and requiring all officers of the commissioners of sewers to pay over any money in their hands, as the commissioners would have in the case of expenses legally payable out of a local rate to be raised by them; and the said person, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any (the amount to be ascertained by the Local Government Board), to or to the order of the commissioners of sewers.

(5) The Local Government Board may certify the amount of expenses incurred, or an estimate of the expenses about to be incurred, by any person appointed by the Board under this section to perform the duty of the commissioners; also, the amount of any loan required to defray any expenses so incurred, or estimated as about to be incurred;

(*n*) **Commissioners of Sewers.** See sec. 99 (1) (*a*), *ante*.

(*o*) **After due inquiry.** See sec. 129, *ante*.

(*p*) **Order.** For example of such an order under a similar provision of the repealed Sanitary Act, 1866 (29 & 30 Vict. c. 90), sec. 49, see *Reg.* v. *Cockerell*, L. R. 6 Q. B. 252; 40 L. J. M. C. 153.

(*q*) **Rate applicable to expenses of commissioners**, i.e., their sewer rate and consolidated rate, or either of them. Sec. 103, *ante*.

and the certificate of the Board shall be conclusive as to all matters to which it relates. 54 & 55 Vict. c. 76.

(6) Whenever the Local Government Board so certifies a loan to be required, that Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of the loan, and every such charge shall have the same effect as if the commissioners of sewers were empowered to raise the loan on the security of the local rate, and had duly executed an instrument charging the same on that rate. *City of London.*

(7) Any principal money or interest for the time being due in respect of a loan under this section shall be a debt due from the commissioners of sewers, and, in addition to any other remedies, may be recovered in the manner in which a debt due from those commissioners may be recovered in pursuance of this section.

(8) The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the commissioners of sewers.

(9) "Expenses," for the purposes of this section, shall include all sums payable under this section by or by the order of the Local Government Board, or the person appointed by that Board.

Saving Clauses.

Saving Clauses.

Saving for water rights.

136. Nothing in this Act shall be construed to authorise any sanitary authority to injuriously affect the navigation of any river or canal, or to divert or diminish any supply of water of right belonging to any river or canal; or to injuriously affect any reservoir, canal, river or stream, or the feeders thereof, or the supply, quality, or fall of water, contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any person would, if this Act had not been passed, have been entitled by law to prevent or be relieved against the injuriously affecting of such reservoir, canal, river, stream, feeders, or such supply, quality, or fall of water, unless the sanitary authority first obtain the consent in writing of the person so entitled as aforesaid (*r*).

Saving for Thames conservators.

137. Nothing in this Act shall affect any power of the conservators of the Thames under the Thames Navigation Act, 1870 (*s*), or otherwise.

33 & 34 Vict. c. cxlix.

Powers of Act to be cumulative.

138. All powers, rights and remedies given by this Act shall be in addition to and not in derogation of any other powers, rights, and remedies conferred by any Act of Parliament, law, or custom, and all such other powers, rights and remedies may be exercised and put in force in the same manner and by the same authority as if this Act had not passed.

Temporary Provisions.

Temporary Provisions.

Existing officers.

139.—(1) In the case of any medical officer of health or inspector of nuisances (*t*) who holds office under an appointment made before the com-

(*r*) **Water rights.** See sec. 43 (2) (b), *ante*, providing for compensation in cases of interference with any ancient mill. As to the common law liability where water is drained underground from neighbouring property, see *Chasemore* v. *Richards*, *Reg.* v. *Met. Bd. Wks.*, and *Grand Junction Canal Co.* v. *Shugar*, *ante*, p. 163.

(*s*) **Thames Navigation Act, 1870.** This Act is repealed and replaced by the Thames Conservancy Act, 1894 (57 & 58 Vict. ch. clxxxvii.).

(*t*) **Medical officer; inspector of nuisances.** Under the repealed sections of the Metropolis Management Act, 1855, and the Nuisances Removal and Sanitary Acts,

54 & 55 Vict. c. 76.

mencement of this Act (in this section referred to as an existing officer), the provisions of this Act with respect to his salary and tenure of office shall be qualified as follows; that is to say,

(a) Where a portion of his salary is paid by the county council out of the Exchequer contribution account (*u*), the Local Government Board shall have the same powers as they have in the case of a district medical officer of a poor law union with regard to the qualification, appointment, duties, salary, and tenure of office of such officer (*x*):

(b) In any other case the Local Government Board may prescribe the qualification and duties of a medical officer of health:

(c) Subject to the said powers of the Local Government Board, the sanitary authority may make such payments as they think fit on account of the remuneration and expenses of such officer, and every such officer shall be removable by the sanitary authority at their pleasure:

(d) Every such inspector of nuisances shall be called a sanitary inspector.

(2) The requirements of this Act with respect to the qualification of medical officers (*z*) shall not apply to medical officers appointed before the first day of January one thousand eight hundred and ninety-two; and this Act shall not prevent any person who at the commencement of this Act is both a district medical officer of a union and a medical officer of health from continuing to hold those appointments in like manner as if this Act had not been passed.

140. [*Term of office of existing members of Woolwich Loc. Bd. Spent.*]

Interpretation

Interpretation.

Interpretation of terms.

141. In this Act, unless the context otherwise requires,—

The expression "London" means (*a*) the administrative county of London (*b*):

"County council."

The expression "county council" means the London County Council:

"Metropolitan asylum managers."

The expression "the metropolitan asylum managers" means the managers of the metropolitan asylum district (*c*):

"Street."

The expression "street" (*d*) includes (*a*) any highway, and any public bridge, and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, and whether or not there are houses in such street:

"Premises."

The expression "premises" includes messuages, buildings, lands, easements, and hereditaments of any tenure whether open or enclosed, whether built on or not, and whether public or private, and whether maintained or not under statutory authority:

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sanitary inspectors were frequently referred to as inspectors of nuisances. As to the appointment of medical officers of health and sanitary inspectors subsequent to the passing of this Act, see secs. 106—108, *ante*. As to the continuance in office of such officers appointed under any enactment repealed by this Act, see sec. 142 (6), *post*.

(*u*) **Exchequer contribution account.** See sec. 108 (1), and note thereto, *ante*.

(*x*) **Powers of Loc. Govt. Bd.** See sec. 108 (1), and note thereto, *ante*.

(*z*) **Qualification of medical officers.** See sec. 108 (2), *ante*.

(*a*) **Means . . . includes.** As to the distinction between these expressions, see note to sec. 250 of the Met. Man. Act, 1855, *ante*.

(*b*) **Administrative county of London.** See the Loc. Govt. Act, 1888, secs. 40 (1) and 100, *ante*.

(*c*) **Metropolitan asylum district.** See note to sec. 44 of the Loc. Govt. Act, 1888, *ante*.

(*d*) **Street.** Compare this definition with the definition of "street" in the Met. Man. Act, 1855, sec. 250, *ante*, and see cases cited in note thereto.

54 & 55 Vict. c. 76.

The expression "house" (*e*) includes schools, also factories and other buildings in which persons are employed:

"House."

The expressions "building" and "house" respectively include the curtilage (*f*) of a building or house, and include a building or house wholly or partly erected under statutory authority:

"Building." "House."

"Bakehouse."

The expression "bakehouse" means any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived:

"Vessel."

The expression "vessel" includes a boat and every description of vessel used in navigation:

"Hospital."

The expression "hospital" means any premises or vessel for the reception of the sick, whether permanently or temporarily applied for that purpose, and includes an asylum of the metropolitan asylum managers:

"Master."

The expression "master" means in the case of a building or part of a building, a person in occupation of or having the charge, management, or control of the building, or part of the building, and in the case of a house the whole of which is let out in separate tenements, or in the case of a lodging-house the whole of which is let to lodgers, includes the person receiving the rent payable by the tenants or lodgers either on his own account or as the agent of another person, and in the case of a vessel means the master or other person in charge thereof:

"House refuse."

The expression "house refuse" (*g*) means ashes, cinders, breeze, rubbish, night-soil, and filth, but does not include trade refuse:

"Trade refuse."

The expression "trade refuse" (*g*) means the refuse of any trade, manufacture, or business, or of any building materials:

"Street refuse."

The expression "street refuse" means dust, dirt, rubbish, mud, road-scrapings, ice, snow, and filth:

"Owner."

The expression "owner" (*h*) means the person for the time being receiving

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(*e*) **House.** See *Wright* v. *Ingle*, and *Poplar Dist. Bd.* v. *Knight*, *ante*, p. 138.

(*f*) **Curtilage.** See cases cited in note (*e*) to sec. 250 of the Met. Man. Act, 1855, *ante*.

(*g*) **House refuse; trade refuse.** Ashes from a brass founder's furnace, containing particles of metal, were held not to be "dust cinders or ashes" within the meaning of the Metropolitan Paving Act, 1817, sec. 60 (repealed). *Law* v. *Dodd*, 1 Ex. 845; 17 L. J. M. C. 65.

Under the repealed provisions of the Met. Man. Act, 1855, secs. 125—128, *ante*, it was held that "dirt, ashes, rubbish, and filth" did not include such things as broken glass, old bottles, and disused garments. *Collins* v. *Paddington Vestry*, 48 L. J. Q. B. 345; 43 J. P. 367. Ashes from coals burnt in the furnace of a steam engine used for the purpose of sawing timber and carrying on the business of a pianoforte manufacturer, were held to be "refuse of a trade, business, or manufacture" within the same provisions. *Gay* v. *Cadby*, 2 C. P. D. 391; 46 L. J. M. C. 260. But clinkers produced in the furnace of an hotel, used to generate steam for the purpose of supplying power for the electric lighting, and for warming and cooking, and other purposes of the hotel, were held not to be "refuse of a trade, manufacture, or business" within the meaning of those sections. *St. Martin's Vestry* v. *Gordon* (1891), 1 Q. B. 61; 60 L. J. M. C. 37.

Clinkers produced in the furnaces of boilers belonging to a steam laundry used to generate steam for the purpose principally of heating the water used in the business, but also for the purpose of warming the laundry, are not "house refuse" within the meaning of the Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 42. *London and Provincial Laundry Co.* v. *Willesden Loc. Bd.* (1892), 2 Q. B. 271; 56 J. P. 696.

See also *Filbey* v. *Combe*, 2 M. & W. 677; *Lyndon* v. *Standridge*, 2 H. & N. 45; 26 L. J. Ex. 386.

(*h*) **Owner.** The Thames Conservators are not owners for the purposes of sec. 4, *ante*. *Thames Conservators* v. *London Port Sanitary Authority* (1894), 1 Q. B. 647; 63 L. J. M. C. 121. Where premises not let at a rack-rent are sub-let for the whole term of the lease, less a few days, the rent payable and the covenants and conditions

54 & 55 Vict. c. 76.

the rack-rent of the premises in connexion with which the word is used, whether on his own account or as agent or trustee (*i*) for any other person, or who would so receive the same if such premises were let at a rack-rent:

"Rack-rent." The expression "rack-rent" means rent which is not less than two-thirds of the full annual value of the premises out of which the rent arises; and the full annual value shall be taken to be the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for the premises, if the tenant undertook to pay all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and if the landlord undertook to bear the cost of the repairs, and insurance, and the other expenses (if any) necessary to maintain the premises in a state to command such rent:

"Slaughterer of cattle or horses." The expression "slaughterer of cattle or horses" means a person whose business it is to kill any description of cattle, or horses, asses, or mules, for the purpose of the flesh being used as butcher's meat; and

"Slaughter-house." the expression "slaughter-house" (*k*) means any building or place used for the purpose of such business:

"Knacker." The expression "knacker" means a person whose business it is to kill any horse, ass, mule, or cattle which is not killed for the purpose of the flesh being used as butcher's meat; and the expression "knacker's yard" means any building or place used for the purpose of such business:

"Cattle." The expression "cattle" includes sheep, goats, and swine:

"Source of water supply." The expression "source of water supply" means any stream, reservoir, aqueduct, pond, well, tank, cistern, pump, fountain, or other work or means for the supply of water, whether actually used or capable of being used for the supply of water or not:

"Sanitary convenience." The expression "sanitary convenience" includes urinals, waterclosets, earth closets, privies, and any similar conveniences.

"Day." The expression "day" means the period between six o'clock in the morning and the succeeding nine o'clock in the evening:

"Ashpit." The expression "ashpit" means any ashpit, dust-bin, ash-tub, or other receptacle for the deposit of ashes or refuse matter:

"Cistern." The expression "cistern" includes a water-butt:

"Dairy." The expression "dairy" includes any farm, farmhouse, cowshed, milk-

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being the same in the lease and the sub-lease, the sub-lessee, and not the lessee, is the owner of the premises within the meaning of the present section. *Truman* v. *Kerslake* (1894), 2 Q. B. 774; 63 L. J. M. C. 222.

See also the definition of "owner" in sec. 250 of the Met. Man. Act, 1855, and cases cited in note thereto, *ante*.

(*i*) **Trustee.** A trustee receiving the rack-rent is an "owner" and bound to execute works required by the sanitary authority under this Act. *Lever, In re; Cordwell* v. *Lever* (1897), 1 Ch. 32; 66 L. J. Ch. 66. As between the tenant for life and the remainderman, the cost falls upon the *corpus* of the property. *Ib.*

(*k*) **Slaughter-house.** A clause in a local Act enacted that "no person shall slaughter any cattle for sale as human food" in any place other than a slaughter-house: *Held*, that to slaughter cattle on private premises, unless for sale as human food, was no offence within the clause. *Elias* v. *Nightingale*, 8 E. & B. 698; 27 L. J. M. C. 151.

Under the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), sec. 126, "slaughter-house" has been held to include not merely the premises where the actual slaughtering takes place, but also the premises used for purposes connected with or incident to slaughtering, e.g., for "pining" cattle. *Hides* v. *Littlejohn*, 74 L. T. (N. S.) 24.

store, milk-shop, or other place from which milk is supplied, or in which milk is kept for purposes of sale : 54 & 55 Vict. c. 76.

The expression "dairyman" (*l*) includes any cowkeeper (*l*), purveyor of milk, or occupier of a dairy. "Dairyman."

Repeal. *Repeal.*

142.—(1) The Acts specified in the fourth schedule to this Act are hereby repealed to the extent specified in the third column of that schedule, and shall be so repealed as from the date in that schedule mentioned, and where no date is mentioned as from the commencement of this Act; Repeal of enactments in schedule.

(2) Provided that—

(a) where any enactment in the said schedule extends beyond London, such enactment shall not unless otherwise expressed be deemed to be hereby repealed, so far as it applies beyond London :

(b) all securities given under and all orders, byelaws, rules, regulations, and notices duly made or issued under or having effect in pursuance of any Act hereby repealed shall be of the same validity and effect as if they had been given, made, or issued under this Act, and any penalties recoverable under any such order, byelaw, rule, regulation, or notice may be recovered as if they were imposed by byelaws under this Act.

(3) Where the county council or a sanitary authority are required by this Act to make byelaws for any purpose for which there are no byelaws of the council or authority in force at the commencement of this Act, the first byelaws made by the county council or sanitary authority for that purpose under this Act shall be submitted to the Local Government Board for sanction not later than six months after the commencement of this Act.

(4) Any enactment expressed in the fourth schedule to this Act to be repealed as from the coming into operation of any byelaw made for the like object shall, although no such byelaw is made, be repealed on the expiration of twelve months next after the commencement of this Act, or such later day, not exceeding eighteen months from such commencement, as may be fixed by Order in Council.

(5) For the removal of doubts it is hereby declared that so much of the Public Health Act, 1875, as re-enacts (*m*) . . . sections thirty-four to thirty-six of the Public Health Act, 1872, extends to London (*n*). 38 & 39 Vict. c. 55. 35 & 36 Vict. c. 79.

(*l*) **Dairyman ; cowkeeper.** An occupier of a farm who keeps cows, the milk of which is used, not for sale, but for fattening calves, is not a dairyman or cowkeeper who requires a licence under sec. 20, *ante*. *Umfreville* v. *London Coun. Counc.*, 66 L. J. Q. B. 177 ; 61 J. P. 84. See also the Dairies, &c., Order, 1885, art. 6 (6), and *Southwell* v. *Lewis*, cited in note thereto, *post*, p. 370.

(*m*) **Section 142 (5).** The words omitted are repealed by the Pub. Hlth. Act, 1896, sec. 6, *post*.

(*n*) **Pub. Hlth. Act, 1872.** Secs. 34—36 are re-enacted by the Pub. Hlth. Act, 1875, sec. 343, and sched. 5, pt. iii., and read as follows :—

34. "Where in any local Acts the consent, sanction, or confirmation of one of Her Majesty's principal Secretaries of State is required with respect to the borrowing of any money, to the giving effect to any byelaws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

"The consent of the Local Government Board, and not that of the Treasury shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.

"If any question arises as to what are sanitary purposes within the meaning of this

54 & 55 Vict. c. 76. *Repeal.*

(6) Officers appointed under any enactment hereby repealed shall continue in office in like manner as if they were appointed in pursuance of this Act, subject nevertheless to the provisions of this Act respecting existing officers (*o*).

(7) Where in any enactment or in any order made by a Secretary of State or by the Local Government Board, and in force at the time of the passing of this Act, or in any document, any Act or any provisions of an Act are mentioned or referred to which relate to London and are repealed by this Act, such enactment, order, or document shall be read as if this Act or the corresponding provisions of this Act were therein mentioned or referred to instead of such repealed provisions, and as if a sanitary authority under this Act were substituted for any nuisance authority mentioned in such repealed provisions.

Commencement of Act.

143. This Act shall come into operation on the first day of January next after the passing thereof.

Short title.

144. This Act may be cited as the Public Health (London) Act, 1891.

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS APPLIED.

Section 33 of the Metropolis Water Act, 1871.

34 & 35 Vict. c. 113.

[*Absence of proper water fittings in premises to be a nuisance. Set out post, vol. ii. tit. "Water"* (*p*).]

Sections 108 and 115 of the Public Health Act, 1875, relating to Nuisances out of the District (*q*).

38 & 39 Vict. c. 55.

Power to proceed where cause of nuisance arises without district.

108. Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the Metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the Metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default

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section, the determination of the Local Government Board on such question shall be conclusive."

35. "The powers and duties of the Board of Trade under the . . . Metropolis Water Acts, 1852 and 1871, shall be exercisable and performed by the Local Government Board, and 'the Local Government Board' shall be deemed to be substituted for 'the Board of Trade' wherever the latter expression occurs in the said Acts."

36. "All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances will admit."

(*o*) **Existing officers.** See sec. 139, *ante*.

(*p*) **Absence of water fittings.** See sec. 2 (1) (f), *ante*.

(*q*) **Pub. Hlth. Act, 1875, secs. 108 and 115.** These sections are applied by secs. 14 (2) and 21 (5) respectively, *ante*.

committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority. 54 & 55 Vict. c. 76.

115. Where any house, building, manufactory, or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house, building, manufactory, or place were situated within such district; so, however, that summary proceedings shall not in any case be had otherwise than before a court having jurisdiction in the district where the house, building, manufactory, or place is situated. Power to proceed where nuisance arises from offensive trade carried on without district.

This section shall extend to the Metropolis so far as to authorise proceedings to be taken under it by any nuisance authority in the Metropolis in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

Sections 130, 134, 135, *and* 140 *of the Public Health Act*, 1875 (*r*), . . . *relating to regulations and orders of the Local Government Board with respect to cholera, or other epidemic, endemic, or infectious diseases.* 38 & 39 Vict. c. 55.

130. The Local Government Board may from time to time make, alter, and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed (*s*). Regulations so made shall be published in the London Gazette, and such publication shall be for all purposes conclusive evidence of such regulations. Power of Local Government Board to make regulations.

* * * * * * *

134. Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease, the Local Government Board may make and from time to time alter and revoke regulations for all or any of the following purposes; (namely,) Power of Local Government Board to make regulations for prevention of diseases.

(1) For the speedy interment of the dead; and
(2) For house to house visitation; and
(3) For the provision of medical aid and accommodation, for the promotion of cleansing, ventilation, and disinfection, and for guarding against the spread of disease;

(*r*) **Pub. Hlth. Act, 1875, secs. 130, 134, 135, and 140.** These sections are applied by sec. 113, *ante*. The words omitted are repealed by the Pub. Hlth. Act, 1896, sec. 6, *post*.

(*s*) **Cholera regulations.** See Order of the Local Govt. Bd. dated Nov. 9th, 1896 (*Lond. Gaz.* Nov. 10th, 1896, p. 6128), making "Regulations as to Cholera, Yellow Fever, and Plague; Ports," *post*, p. 379. In addition there is also now in force an Order of the Local Govt. Bd. dated Aug. 5th, 1893 (*Lond. Gaz.* Aug. 8th, 1893, p. 4524), as explained by Order of the Local Govt. Bd. dated Nov. 9th, 1896 (*Lond. Gaz.* Nov. 10th, 1896, p. 6128), prescribing Cholera Regulations (bedding and clothing, &c.), which provides that "no dirty bedding or disused or filthy clothing, whether belonging to emigrants or otherwise from France or from any foreign port in Europe north of Dunkirk other than ports of Sweden, Norway, and Denmark, or from any port on the Black Sea or Sea of Azov, whether in Russia, Roumania, Bulgaria, or Turkey, or from any other port of Turkey in Asia, shall be delivered overside, except for the purpose of disinfection or destruction, nor landed in any port or place in England or Wales, except for the purpose of disinfection or destruction."

For penalties for wilfully neglecting to obey or carry out, or for obstructing the execution of, such regulations, see the Pub. Hlth. Act, 1896, sec. 1 (3), *post*.

54 & 55 Vict. c. 76.

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels, whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being, for the period in such order mentioned; and may by any subsequent order abridge or extend such period (*t*).

Publication of regulations and orders.

135. All regulations and orders so made by the Local Government Board shall be published in the London Gazette, and such publication shall be conclusive evidence thereof for all purposes (*u*).

Penalty for violating or obstructing the execution of regulations.

140. Any person who

(1) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,

(2) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

38 & 39 Vict. c. 55.

Sections 182—186 *of the Public Health Act,* 1875 (*x*), *relating to byelaws* (*y*).

Authentication and alteration of byelaws.

182. All byelaws made by a local authority under and for the purposes of this Act shall be under their common seal; and any such byelaw may be altered or repealed by a subsequent byelaw made pursuant to the provisions of this Act: Provided that no byelaw made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

Power to impose penalties on breach of byelaws.

183. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty (*z*).

Confirmation of byelaws.

184. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper (*a*); nor shall any such byelaws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such byelaws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed byelaws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such byelaws relate, without fee or reward.

(*t*) **Regulations.** As to their execution, see sec. 82, *ante*.

(*u*) **Evidence of London Gazette.** A cutting from the *London Gazette* is not properly receivable as evidence of the publication of a notice therein. A copy of the *Gazette* itself must be produced. *Reg.* v. *Lowe*, 52 L. J. M. C. 122; 47 J. P. 535.

(*x*) **Pub. Hlth. Act, 1875, secs. 182—186.** These sections are applied by sec. 114, *ante*.

Sec. 184 is also applied by sec. 22 of the Prevention of Cruelty to Children Act, 1894, *post*, vol. ii., to byelaws of the local authority under that Act, with the substitution of "Secretary of State" for "the Local Govt. Bd."

As to the application of these sections to byelaws of the County Council for the good rule and government of the county, see the Loc. Govt. Act, 1888, sec. 16 (1), and the Mun. Corp. Act, 1882, sec. 23, *ante*.

(*y*) **Byelaws.** As to byelaws generally, their effect and validity, see note to sec. 23 of the Mun. Corp. Act, 1882, *ante*.

(*z*) **Penalties.** See secs. 117—119, *ante*, as to the recovery and application of penalties.

(*a*) **Confirmed by Local Govt. Bd.** If a byelaw is bad, its allowance by the Local Govt. Bd. will not cure its invalidity. *Elwood* v. *Bullock*, 6 Q. B. 383; 13 L. J. Q. B. 330; *Reg.* v. *Wood*, 5 E. & B. 49; S.C. *nom. Reg.* v. *Rose*, 24 L. J. M. C. 130.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed byelaws or any part thereof, on payment of sixpence for every hundred words contained in such copy. 54 & 55 Vict. c. 76.

A byelaw required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

185. All byelaws made by a local authority under this Act, or for purposes the same as, or similar to, those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such byelaws relate, on his application for the same. Byelaws to be printed, &c.

186. A copy of any byelaws made under this Act by a local authority, signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence, until the contrary is proved, in all legal proceedings of the due making, confirmation, and existence of such byelaws without further or other proof. Evidence of byelaws.

Sections 293—296 *of the Public Health Act*, 1875, *relating to inquiries of the Local Government Board* (*b*). 38 & 39 Vict. c. 55.

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act (*c*), and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act. Power of Board to direct inquiries.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to, the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein. Orders as to costs of inquiries.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct. Orders of Board under this Act.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of paper and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts (*d*). Powers of inspectors of Local Government Board.

Sections 211 *and* 212 *of the Metropolis Management Act*, 1855, *relating to Appeals to London County Council.* 18 & 19 Vict. c. 120.

[*Power to appeal against orders and acts of vestries and district boards in relation to construction of works. County Council to appoint a committee for hearing appeals. Set out ante, p.* 200 (*e*).]

(*b*) **Pub. Hlth. Act, 1875, secs. 293—296.** These sections are applied by sec. 129, *ante*. They are also applied by the Loc. Govt. Act, 1888, sec. 87 (1), *ante*, and by the Housing of the Working Classes Act, 1890, sec. 85 (2), *post*, vol. ii., to inquiries by the Local Govt. Bd. under those Acts respectively.

(*c*) **Inquiries directed by this Act.** See secs. 101 (1), 107 (2), and 135 (1), *ante*.

(*d*) **Powers of poor law inspectors.** The Poor Law Board Act, 1847 (10 & 11 Vict. c. 109), sec. 21, empowers inspectors to summon witnesses for the purpose of being examined before them, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, &c., relating to the matter of the inquiry, and not relating to or involving any question of title to any lands not being the property of any parish or union. They may examine witnesses on oath, or may require the party examined to make and subscribe a declaration of the truth of the matter respecting which such witness is examined. No person can be required, in obedience to any such summons, to go more than ten miles from his place of abode.

(*e*) **Appeal to County Council.** See sec. 126, and note thereto, *ante*.

54 & 55 Vict. c. 76.

Sec. 102.

SECOND SCHEDULE.

PROVISIONS OF PUBLIC HEALTH ACTS EXTENDED TO WOOLWICH.

Enactments.	Subject Matter.
38 & 39 Vict. c. 55:	
Section four.	Definitions.
Sections five to eight, ten, and twelve.	Authorities for execution of Act.
Sections thirteen to thirty-four.	Sewerage and drainage.
Section forty-one, so far as it relates to a drain.	Examination, and enforcement of law, as to drain.
Sections fifty-one to sixty-one, sixty-three, and sixty-five.	Water supply.
Sections one hundred and forty-four to one hundred and forty-eight.	Highways.
Sections one hundred and forty-nine to one hundred and fifty-five, and one hundred and fifty-seven to one hundred and sixty.	Streets and buildings.
Sections one hundred and sixty-one to one hundred and sixty-three.	Lighting streets.
Sections one hundred and sixty-four and one hundred and sixty-five.	Public pleasure grounds and clocks.
Sections one hundred and sixty-six to one hundred and sixty-eight.	Markets.
Section one hundred and seventy-two.	Licensing of, and byelaws for, horses, boats, &c., let for hire.
Sections one hundred and seventy-three and one hundred and seventy-four.	Contracts.
Sections one hundred and seventy-five to one hundred and seventy-eight.	Purchase of land.
Sections one hundred and seventy-nine to one hundred and eighty-one.	Arbitration.
Sections one hundred and eighty-two to one hundred and eighty-six, and one hundred and eighty-eight.	Byelaws.
Sections one hundred and eighty-nine and one hundred and ninety-two to one hundred and ninety-six.	Officers.
Sections one hundred and ninety-seven, one hundred and ninety-nine, two hundred, and two hundred and three to two hundred and six.	Mode of conducting business.
Sections two hundred and seven, and two hundred and nine to two hundred and twenty-seven.	Expenses and rates.
Sections two hundred and thirty-three to two hundred and forty-three.	Borrowing.
Sections two hundred and forty-five, two hundred and forty-seven, two hundred and forty-nine, and two hundred and fifty.	Audit.
Sections two hundred and fifty-one, two hundred and fifty-three, two hundred and fifty-four, and two hundred and fifty-six to two hundred and sixty-nine.	Legal proceedings.
Section two hundred and eighty-five.	Works outside district.
Sections two hundred and ninety-three to three hundred and four.	Powers of Local Government Board.

54 & 55 Vict. c. 76.

Enactments.	Subject Matter.
38 & 39 Vict. c. 55—*cont.*	
Sections three hundred and five to three hundred and eleven, and three hundred and thirteen to three hundred and seventeen.	Miscellaneous.
Sections three hundred and twenty-seven to three hundred and thirty-seven, and three hundred and thirty-nine to three hundred and forty-one.	Saving clauses.
The schedules, so far as they are applicable.	
45 & 46 Vict. c. 23.	Byelaws for fruit pickers' lodgings.
46 & 47 Vict. c. 37.	Support of sewers.
47 & 48 Vict. c. 12.	Confirmation of byelaws.
47 & 48 Vict. c. 74.	Officers.
48 & 49 Vict. c. 53.	Members and officers of local authority.
51 & 52 Vict. c. 52.	Buildings in streets.
53 & 54 Vict. c. 17.	Rating of orchards.

THIRD SCHEDULE.

Sec. 130.

FORMS.

FORM A.

Form of Notice requiring Abatement of Nuisance.

To [*person causing the nuisance, or owner or occupier of the premises at which the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health (London) Act, 1891, the [*describe the sanitary authority*], being satisfied of the existence at [*describe premises where the nuisance exists*] of a nuisance being [*describe the nuisance, for instance*, premises in such a state as to be a nuisance or injurious or dangerous to health, *or for further instance*, a ditch or drain so foul as to be a nuisance or injurious or dangerous to health], do hereby require you within [*specify the time*] from the service of this notice to abate the same [and to execute such works and do such things as may be necessary for that purpose, *or* and for that purpose to *specify any works to be executed*], [and the said [*authority*] do hereby require you within the said period to do what is necessary for preventing the recurrence of the nuisance, and for that purpose to *&c.*]

Where the nuisance has been abated, but is likely to recur, say, being satisfied that at *&c.* there existed recently, to wit, on or about the day of the following nuisance, namely [*describe nuisance*], and that although the said nuisance has since the last-mentioned day been abated, the same is likely to recur at the said premises, do hereby require you within [*specify time*], to do what is necessary for preventing the recurrence of the nuisance [and for that purpose to *&c.*]

If you make default in complying with the requisitions of this notice [or if the said nuisance, though abated, is likely to recur], a summons will be issued requiring your attendance before a petty sessional court, to answer a complaint which will be made for the purpose of enforcing the abatement of the nuisance, or prohibiting the recurrence thereof, or both, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of 18 .

Signature of officer of sanitary authority

54 & 55 Vict. c. 76.

FORM B.

Form of Summons.

Summons.

To *A.B.*, of [*or* to the owner *or* occupier of] [*describe premises*] situated [*insert such description of the situation as may be sufficient to identify the premises*],

County of &c., to wit. } YOU are required to appear before [*describe the petty sessional court*], at the court [*or* petty sessions] holden at on the day of next, at the hour of in the noon, to answer the complaint this day made to me by that at the premises above-mentioned [*or* at certain premises situate at No. in street in the parish of *or insert any other such description or reference as may be sufficient to identify the premises*], in the district of [*describe the sanitary authority*], the following nuisance exists [*describe the nuisance and add, where the person causing the nuisance is summoned*, and that the said nuisance is caused by the act, default or sufferance of you, *A.B.*].

Where the nuisance is discontinued, but is likely to be repeated, say, to answer the complaint &c. that at &c. there existed recently, to wit, on or about the day of , the following nuisance [*describe the nuisance, and add, where the person causing the nuisance is summoned*, and that the said nuisance was caused, &c.], and although the said nuisance has since the said last-mentioned day been abated or discontinued, that the same or the like nuisance is likely to recur at the said premises.

Given under my hand and seal this day of 18 .

J.S. (L.S.)

FORM C.

Form of Nuisance Order.

To *A.B.*, of [*or* to the owner *or* occupier of] [*describe premises*] situated [*insert such description of the situation as may be sufficient to identify the premises*].

County of, &c. to wit. } WHEREAS the said *A.B.* [*or* the owner *or* occupier of the said premises within the meaning of the Public Health (London) Act, 1891] has this day appeared before me [*or* us, *describing the court*], to answer the matter of a complaint made by &c. that at &c. [*follow the words of complaint in summons*] [*or in case the party charged do not appear, say*, Whereas it has been now proved to my (*or* our) satisfaction that a summons has been duly served according to the Public Health (London) Act, 1891, requiring the said *A.B.* [*or* the owner *or* occupier of the said premises] to appear this day before me [*or* us] to answer the matter of a complaint made by &c. that at &c.]:

[*Any of the following orders may be made or a combination of any of them as the case seems to require.*]

Abatement order. Now on proof here had before me [*or* us] that the nuisance so complained of does exist at the said premises [*add, where the order is made on the person causing the nuisance*, and that the same is caused by the act, default, or sufferance of *A.B.*], I [*or* we], in pursuance of the Public Health (London) Act, 1891, do order the said *A.B.* [*or* the said owner *or* occupier] within [*specify the time*] from the service of this order according to the said Act [*here specify the nuisance to be abated, as, for instance*, to prevent the premises being a nuisance or injurious or dangerous to health, or, *for further instance*, to prevent the ditch or drain being a nuisance or injurious or dangerous to health] [and *state any works to be executed, as, for instance*, to whitewash and disinfect the premises, *or, for further instance*, to clean out the ditch].

Prohibition order, No. 1. And I [*or* we] being satisfied that notwithstanding the said nuisance may be temporarily abated under this order, the same is likely to recur, do therefore prohibit the said *A.B.* [*or* the said owner *or* occupier] from allowing the recurrence of the said or a like nuisance [and for that purpose I *or* we direct the said *A.B.* *or* the said owner *or* occupier, *here specify any works to be executed, as, for instance*, to fill up the ditch].

Prohibition order, No. 2. Now on proof here had before me [*or* us] that at or recently before the time of making the said complaint, to wit, on the nuisance so complained

of did exist at the said premises, but that the same has since been abated [*add, where the order is made on the person causing the nuisance*, and that the nuisance was caused by the act, default or sufferance of *A.B.*], yet, notwithstanding such abatement, I [*or* we] being satisfied that it is likely that the same or the like nuisance will recur at the said premises, do therefore prohibit [*continue as in Prohibition Order, No.* 1]. 54 & 55 Vict. c. 76.

Now, on proof here had before me [*or* us] that the nuisance is such as to render the dwelling-house [*describe the house*] situated at [*insert such a description of the situation as may be sufficient to identify the dwelling-house*] unfit in my [*or* our] judgment for human habitation, I [*or* we] in pursuance of the Public Health (London) Act, 1891, do hereby prohibit the use of the said dwelling-house for human habitation. Closing order.

Given under the hand and seal of me [*or* the hands and seals of us, *describing the court*].

This day of 18 .

J.S. (L.S.)

J.P. (L.S.)

FORM D.

Form of Nuisance Order to be executed by Sanitary Authority.

To the , [*describe the sanitary authority*],

County of &c., to wit. } WHEREAS a complaint has been made by

that at certain premises situated at No. in street, in the parish of [*or insert any other description or reference as may be sufficient to identify the premises*] in the district of [*describe the sanitary authority*] the following nuisance exists [*describe the nuisance*].

And it has been now proved to my [*or* our] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person by whose act, default, or sufferance the nuisance is caused, is known *or* can be found [*as the case may be*]; Now I [*or* we] in pursuance of the Public Health (London) Act, 1891, do [*continue as in any of the orders in Form C. with the substitution of the name of the sanitary authority for that of A.B. or the owner or occupier*].

Given *&c.* (*as in last form*).

FORM E.

Warrant of Justice for Entry to Premises.

WHEREAS *A.B.*, being a person authorised under the Public Health (London) Act, 1891, to enter certain premises [*describe the premises*], has made application to me, *C.D.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], to authorise the said *A.B.* to enter the said premises, and whereas I, *C.D.*, am satisfied by information on oath that there is reasonable ground for such entry, and that there has been a refusal or failure to admit to such premises, and *either* that reasonable notice of the intention to apply to a justice for a warrant has been given, *or* that the giving of notice of the intention to apply to a justice for a warrant would defeat the object of the entry.

[*or* am satisfied by information on oath that there is reasonable cause to believe that there is on the said premises a contravention of the Public Health (London) Act, 1891, or of a byelaw made under that Act, and that an application for admission or notice of an application for a warrant would defeat the object of the entry].

Now, therefore, I, the said *C.D.*, do hereby authorise the said *A.B.* to enter the said premises, and if need be by force, with such assistants as he may require, and there execute his duties under the said Act.

Given, *&c.* (*as in last form*).

54 & 55 Vict. c. 76.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
26 Geo. 3, c. 71.	An Act for regulating houses and other places kept for the purpose of slaughtering horses.	The whole Act.
57 Geo. 3, c. xxix.	An Act for better paving, improving, and regulating the streets of the Metropolis, and removing and preventing nuisances and obstructions therein.	Section fifty-seven so far as it relates to a cesspool; sections fifty-nine to sixty-one; section sixty-three; section sixty-four from "or shall throw" to "either of such pavements" as from the coming into operation of any byelaw made for the like object; sections sixty-seven and sixty-eight; and sections seventy-three and seventy-four as from the coming into operation of any byelaw made for the like object.
2 & 3 Vict. c. 47.	An Act for further improving the police in and near the Metropolis.	Section sixty, from "or cause any offensive matter" to "so as to be a common nuisance," as from the coming into operation of any byelaw made for the like object; and from "every occupier of a house" to "reference to this enactment."
7 & 8 Vict. c. 87.	An Act to amend the law for regulating places kept for slaughtering horses.	The whole Act.
16 & 17 Vict. c. 128.	An Act to abate the nuisance arising from the smoke of furnaces in the Metropolis and from steam vessels above London Bridge.	The whole Act as respects all places without as well as within London.
18 & 19 Vict. c. 116.	The Diseases Prevention Act, 1855.	The whole Act.
18 & 19 Vict. c. 120.	The Metropolis Management Act, 1855.	Section eighty-one; sections eighty-two to eighty-five, except so far as they relate to a drain or sewer, or any work or apparatus connected therewith; section eighty-six down to "defrayed under this Act;" sections eighty-eight, one hundred and three, and one hundred and four; section one hundred and sixteen from "and

Session and Chapter.	Title or Short Title.	Extent of Repeal.
18 & 19 Vict. c. 120 —*cont.*	The Metropolis Management Act, 1855 —*cont.*	also to cause" to the end of the section; sections one hundred and seventeen, and one hundred and twenty-five; section one hundred and twenty-six, as from the coming into operation of any byelaw made for the like object; sections one hundred and twenty-seven to one hundred and twenty-nine, one hundred and thirty-two, one hundred and thirty-three, and one hundred and thirty-four; section one hundred and ninety-eight from "and to every such report" to "for their parish or district;" section two hundred and two from "for the emptying" to "disposing of refuse" as from the coming into operation of any byelaw made for the like object: and section two hundred and eleven so far as regards any watercloset, privy, ashpit, or cesspool.
18 & 19 Vict. c. 121.	The Nuisances Removal Act for England, 1855.	The whole Act.
19 & 20 Vict. c. 107.	An Act to amend the Smoke Nuisance Abatement (Metropolis) Act, 1853.	The whole Act as respects all places without as well as within London.
23 & 24 Vict. c. 77.	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act.
25 & 26 Vict. c. 102.	The Metropolis Management Amendment Act, 1862.	Sections forty-three and sixty-two; in section sixty-four the word "eighty-first," and the words "and eighty-sixth;" sections sixty-seven, seventy, eighty-nine, ninety-one, ninety-three, ninety-four, and ninety-five; and section one hundred and five, from "and all penalties" to "1855."
26 & 27 Vict. c. 117.	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act.
29 & 30 Vict. c. 41.	The Nuisances Removal (No. 1) Act, 1866.	The whole Act.
29 & 30 Vict. c. 90.	The Sanitary Act, 1866.	The whole Act, except section forty-one.

54 & 55 Vict. c. 76. Session and Chapter.	Title or Short Title.	Extent of Repeal.
31 & 32 Vict. c. 115.	The Sanitary Act, 1868.	The whole Act.
32 & 33 Vict. c. 100.	The Sanitary Loans Act, 1869.	The whole Act.
33 & 34 Vict. c. 53.	The Sanitary Act, 1870.	The whole Act.
35 & 36 Vict. c. 79.	The Public Health Act, 1872.	The whole Act.
37 & 38 Vict. c. 67.	The Slaughterhouses, &c. (Metropolis) Act, 1874.	The whole Act.
37 & 38 Vict. c. 89.	The Sanitary Law Amendment Act, 1874.	The whole Act, except so much of sections forty-six and forty-nine as relates to common lodging-houses.
38 & 39 Vict. c. 55.	The Public Health Act, 1875.	Section one hundred and eight from "In this section" to the end of the section; section one hundred and fifteen from "In this section" to the end of the section. Section two hundred and ninety-one, as respects the whole of the port of London.
41 & 42 Vict. c. 74.	The Contagious Diseases (Animals) Act, 1878.	Section thirty-four.
42 & 43 Vict. c. 54.	The Poor Law Act, 1879.	Sections fifteen and sixteen.
43 & 44 Vict. c. lix.	The Local Government Board's Provisional Orders Confirmation (Amersham Union, &c.) Act, 1880.	Section two.
46 & 47 Vict. c. 35.	The Diseases Prevention (Metropolis) Act, 1883.	The whole Act.
46 & 47 Vict. c. 53.	The Factory and Workshop Act, 1883.	Section seventeen, down to "for the district," being the first two sub-sections.
47 & 48 Vict. c. 60.	The Metropolitan Asylum Board (Borrowing Powers) Act, 1884.	The whole Act.
48 & 49 Vict. c. 72.	The Housing of the Working Classes Act, 1885.	Section seven; and section nine from "This section shall apply" to "sanitary authority," being sub-section (6).

Session and Chapter.	Title or Short Title.	Extent of Repeal.
49 & 50 Vict. c. 32.	The Contagious Diseases (Animals) Act, 1886.	Section nine.
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	Section forty-five; and section eighty-eight, from "Section one hundred and ninety-one" to the end of the section, being sub-section (*c*).
52 & 53 Vict. c. 56.	The Poor Law Act, 1889.	Section three, down to "common poor fund," being sub-sections (1), (2), and (3); and sections six and seven.
52 & 53 Vict. c. 64.	The Public Health Act, 1889.	Section one, from "and as regards" to the end of the section; and in section two the words "or of section fifty-two of the Sanitary Act, 1866."
52 & 53 Vict. c. 72.	The Infectious Disease (Notification) Act, 1889.	Section two, from "to every London" down to "Act and" being sub-section (*a*); sections ten and twelve; section sixteen, from "the Commissioners of Sewers" down to "Act, 1887," being sub-sections (*a*) and (*b*); and from "The expression 'London 'district'" down to "local authority is elected."
53 & 54 Vict. c. 34.	The Infectious Disease (Prevention) Act, 1890.	Section two, from "Local authority" to the end of the section; section three, from "to every London district" to "this Act; and;" and section five, down to "London district, and."
53 & 54 Vict. c. ccxliii.	The London Council (General Powers) Act, 1890.	Sections twenty-two and twenty-four.

59 & 60 Vict. c. 19. An Act to make further Provision with respect to Epidemic, Endemic, and Infectious Diseases, and to repeal the Acts relating to Quarantine.

[7th August, **1896**

Amendment of 38 & 39 Vict. c. 55, ss. 130, 134, as to regulations with respect to disease.

1.—(1) Regulations of the Local Government Board made in pursuance of section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections, as extended to London by the Public Health (London) Act, 1891 (*a*), may provide for such regulations being enforced and executed by the officers of customs and the officers and men employed in the coastguard as well as by other authorities and officers, and without prejudice to the generality of the powers conferred by those sections may provide for—

(a) the signals to be hoisted by vessels having any case of epidemic, endemic, or infectious disease on board ; and

(b) the questions to be answered by masters, pilots, and other persons on board any vessel as to cases of such disease on board during the voyage or on the arrival of the vessel ; and

(c) the detention of vessels and of persons on board vessels ; and

(d) the duties to be performed in cases of such disease by masters, pilots, and other persons on board vessels.

(2) Provided that the regulations shall be subject to the consent—

(a) so far as they apply to the officers of customs, of the commissioners of Her Majesty's customs ; and

(b) so far as they apply to officers or men employed in the coastguard, of the Admiralty ; and

(c) so far as they apply to signals, of the Board of Trade.

(3) If any person wilfully neglects or refuses to obey or carry out, or obstructs the execution of, any regulation made under section one hundred and thirty or section one hundred and thirty-four of the Public Health Act, 1875, or in pursuance of either of those sections as extended to London by the Public Health (London) Act, 1891 (*a*), and as amended by this Act, he shall be liable to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a further penalty not exceeding fifty pounds for every day during which the offence continues ; and any such penalty, if not recovered under the provisions of the Acts relating to public health (*b*), shall be recoverable by action on behalf of the Crown in the High Court.

54 & 55 Vict. c. 76.

Transfer of powers under 39 & 40 Vict. c. 36, s. 234.

2. The powers exerciseable by Her Majesty in Council or any two of of the Lords of Her Majesty's Privy Council under section two hundred and thirty-four of the Customs Consolidation Act, 1876 (*c*), shall be

(*a*) **Regulations.** See the Pub. Hlth. (London) Act, 1891, sec. 113, and sched. 1, and notes thereto, *ante* ; and the Cholera Regulations of the Loc. Govt. Bd., dated Nov. 9th, 1896, *post*.

(*b*) **Recovery of penalties.** See the Pub. Hlth. (London) Act, 1891, sec. 117, *ante*.

(*c*) **The Customs Consolidated Act, 1876, sec. 234,** as amended by the present Act, enacts :—" It shall be lawful for Her Majesty in Council, from time to time, by her or their order to require that no person on board any ship coming to any port in the United Kingdom . . . from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of health of the persons on board shall have been ascertained, on examination by the proper

exerciseable by the Local Government Board, and accordingly in that section the words "the Local Government Board," shall be substituted for the words "Her Majesty in Council or any two Lords of Her Majesty's Privy Council." 59 & 60 Vict. c. 19.

3. [*Application to Scotland.*]

4. [*Application to Ireland.*]

5. In the making of the regulations referred to in this Act regard shall be had to the expediency of uniform regulations throughout the whole of the United Kingdom. Regulations to be uniform.

6. The enactments relating to quarantine mentioned in the schedule to this Act, and the other enactments therein mentioned, shall be repealed, as to the whole of the British Islands, to the extent appearing in the third column of that schedule. Repeal of enactments.

7. This Act shall come into operation on the expiration of three months from the passing thereof. Commencement of Act.

8. This Act may be cited as the Public Health Act, 1896. Short title.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
* *	* *	* * *
38 & 39 Vict. c. 55.	The Public Health Act, 1875.	Section one hundred and thirty from "Any person wilfully" to the end of the section. In Part III. of Schedule V. the words re-enacting 29 & 30 Vict. c. 90, ss. 51 and 52.
* *	* * *	* * *
54 & 55 Vict. c. 76.	The Public Health (London) Act, 1891.	In section one hundred and forty-two the words "sections fifty-one and fifty-two of the Sanitary Act, 1866, and" So much of the Act as extends or applies any provision of the Public Health Acts which is repealed by this Act, and in particular the second paragraph of section one hundred and thirty of the Public Health Act, 1875, and the whole of section two of the Public Health Act, 1889, as set out in the first schedule to the Act.

officer of customs, at such place or places as may from time to time be appointed by the commissioners of customs for such purpose; and before permission to land shall have been given by such officer, . . . and any person so quitting any such vessel shall forfeit a sum not exceeding one hundred pounds, and if the master, pilot or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order, until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties, or either of them if incurred, . . . shall be subject to reduction to any sum not exceeding one hundred pounds, and may be recovered by information and summons before a stipendiary magistrate, or any two justices of the peace, who are hereby authorised to reduce the same accordingly, and to commit the offender to prison in default of payment of any penalty so imposed, for any period not exceeding six months."

PUBLIC HEALTH ORDERS.

THE DAIRIES, COW-SHEDS, AND MILK-SHOPS ORDER OF 1885 (*a*).

* * * * * * *

Short Title.

1. This Order may be cited as "The Dairies, Cow-sheds, and Milk-shops Order of 1885."

* * * * * * *

Registration of Dairymen and others.

6.—(1) It shall not be lawful for any person to carry on in the district of any local authority the trade of a cow-keeper, dairyman, or purveyor of milk, unless he is registered as such therein in accordance with this article.

(2) Every local authority shall keep a register of persons from time to time carrying on in their district the trade of cow-keepers, dairymen, or purveyors of milk, and shall from time to time revise and correct the register.

(3) The local authority shall register every such person, but the fact of such registration shall not be deemed to authorise such person to occupy as a dairy or cow-shed any particular building or in any way preclude any proceedings being taken against such person for non-compliance with or infringement of any of the proceedings of this Order or any regulation made thereunder.

(4) The local authority shall from time to time give public notice by advertisement in a newspaper circulating in their district, and, if they think fit, by placards, handbills, or otherwise, of registration being required, and of the mode of registration.

(5) A person who carries on the trade of cow-keeper or dairyman for the purpose only of making and selling butter or cheese or both, and who does not carry on the trade of purveyor of milk, shall not, for the purposes of registration, be deemed to be a person carrying on the trade of cow-keeper or dairyman, and need not, by reason thereof, be registered.

(6) A person who sells milk of his own cows in small quantities to his workmen or neighbours for their accommodation, shall not, for the purposes of registration, be deemed, by reason only of such selling, to be a person carrying on the trade of cow-keeper, dairyman, or purveyor of milk, and need not, by reason thereof, be registered (*b*).

Construction and Water Supply of New Dairies and Cow-sheds.

7.—(1) It shall not be lawful for any person following the trade of cow-keeper or dairyman to begin to occupy as a dairy or cow-shed any building not so occupied at the commencement of this Order, unless and until he first makes provision, to the reasonable satisfaction of the local authority, for the lighting, and the ventilation, including air-space, and the cleansing, drainage, and water supply, of the same while occupied as a dairy or cow-shed.

(2) It shall not be lawful for any such person to begin so to occupy any such building without first giving one month's notice in writing to the local authority of his intention so to do.

Sanitary State of all Dairies and Cow-sheds.

8. It shall not be lawful for any person following the trade of cow-keeper or dairyman to occupy as a dairy or cow-shed any building, whether so occupied at the commencement of this Order or not, if and as long as the lighting, and the

(*a*) **Application of Order.** As to the application of this Order, see note to sec. 28 (1) of the Pub. Hlth. (London) Act, 1891, *ante*.

(*b*) **Cowkeeper; dairyman.** A farmer who kept cows for the supply of his family and for amusement, but who occasionally supplied a few quarts of milk to two dairymen living near when they ran short, was held not to be a person carrying on the trade of a cowkeeper or dairyman so as to require registration. *Southwell* v. *Lewis*, 45 J. P. 206. See also *Umfreville* v. *London Coun. Counc.*, *ante*, p. 355.

ventilation, including air-space, and the cleansing, drainage, and water-supply thereof, are not such as are necessary or proper—

(a) for the health and good condition of the cattle therein; and

(b) for the cleanliness of milk-vessels used therein for containing milk for sale; and

(c) for the protection of the milk therein against infection or contamination.

Contamination of Milk.

9. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop—

(a) to allow any person suffering from a dangerous infectious disorder, or having recently been in contact with a person so suffering, to milk cows or to handle vessels used for containing milk for sale, or in any way to take part or assist in the conduct or the trade or business of the cow-keeper or dairyman, purveyor of milk, or occupier of a milk-store or milk-shop, so far as regards the production, distribution, or storage of milk; or

(b) if himself so suffering or having recently been in contact as aforesaid, to milk cows, or handle vessels, used for containing milk for sale, or in any way to take part in the conduct of his trade or business, as far as regards the production, distribution, or storage of milk—

until in each case all danger therefrom of the communication of infection to the milk or of its contamination has ceased.

10. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop, after the receipt of notice of not less than one month from the local authority calling attention to the provisions of this article, to permit any watercloset, earthcloset, privy, cesspool, or urinal to be within, communicate directly with, or ventilate into, any dairy or any room used as a milk-store or milk-shop.

11. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk, or being the occupier of a milk-store or milk-shop, to use a milk-store or milk-shop in his occupation, or permit the same to be used as a sleeping apartment, or for any purpose incompatible with the proper preservation of the cleanliness of the milk-store or milk-shop, and of the milk-vessels and milk therein, or in any manner likely to cause contamination of the milk therein.

12. It shall not be lawful for any person following the trade of cow-keeper or dairyman or purveyor of milk to keep any swine in any cow-shed or other building used by him for keeping cows, or in any milk-store or other place used by him for keeping milk for sale.

Regulations of Local Authority.

13. A local authority may from time to time make regulations (c) for the following purposes, or any of them:

(a) For the inspection of cattle in dairies.

(b) For prescribing and regulating the lighting, ventilation, cleansing, draining, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cow-keepers or dairymen.

(c) For securing the cleanliness of milk-stores, milk-shops, and of milk-vessels used for containing milk for sale by such persons.

(d) For prescribing precautions to be taken by purveyors of milk and persons selling milk by retail against infection or contamination.

Provisions as to Regulations of Local Authority.

14. The following provisions shall apply to regulations made by the local authority under this Order:

(1) Every regulation shall be published by advertisement in a newspaper circulating in the district of the local authority.

(c) **Regulations.** The Regulations of the Met. Bd. Wks., under this Order, dated July 3rd, 1885, are still in force. See note to sec. 28 (1) of the Pub. Hlth. (London) Act, 1891, *ante*.

(2) The local authority shall send to the Local Government Board a copy of every regulation made by them not less than one month before the date named in such regulation for the same to come into force.

(3) If at any time the Local Government Board are satisfied on inquiry with respect to any regulation, that the same is of too restrictive a character, or otherwise objectionable, and direct the revocation thereof, the same shall not come into operation, or shall thereupon cease to operate, as the case may be.

Existence of Disease among Cattle.

15. If at any time disease exists among the cattle in a dairy or cow-shed, or other building or place, the milk of a diseased cow therein—

(a) shall not be mixed with other milk; and

(b) shall not be sold or used for human food; and

(c) shall not be sold or used for food of swine, or other animals, unless and until it has been boiled.

* * * * * * *

C. L. PEEL.

THE DAIRIES, COW-SHEDS, AND MILK-SHOPS AMENDING ORDER, 1886.

"To the Mayor and Commonalty and Citizens of the City of London, acting by the Mayor, Aldermen, and Commons of that City in Common Council assembled":—

To the *Metropolitan Board of Works* (*d*);—

* * * * * * *

And to all others whom it may concern.

* * * * * * *

Article 1. This Order may be cited as "The Dairies, Cow-sheds, and Milk-shops Amending Order of 1886."

Article 2. Article 14 of the Order of 1885 shall be altered by the substitution therein of the words "Local Government Board" for the words "Privy Council" occurring therein.

Article 3. If any person is guilty of an offence against the Order of 1885, he shall for every such offence be liable to a penalty of five pounds, and in the case of a continuing offence to a further penalty of forty shillings for each day after written notice of the offence from the local authority:

Provided, nevertheless, that the justices or court before whom any complaint may be made, or any proceedings may be taken in respect of any such offence, may, if they think fit, adjudge the payment, as a penalty, of any sum less than the full amount of the penalty imposed by this Order.

Article 4. In this Order the expression "local authority" means—

In the City of London and the liberties thereof, the mayor and commonalty and citizens of the City of London acting by the mayor, aldermen, and commons of that City in common council assembled:

In the Metropolis, except the City of London and the liberties thereof, the *Metropolitan Board of Works* (*d*):

* * * * * * *

Given under the seal of office of the Local Government Board, this first day of November, in the year one thousand eight hundred and eighty-six.

L.S.

CHAS. T. RITCHIE,
President.

HUGH OWEN,
Secretary.

(*d*) **Met. Bd. Wks.** Now the London County Council. Loc. Govt. Act, 1888, sec. 40 (8), *ante*

INFECTIOUS DISEASE NOTIFICATION.

Order of the Local Government Board (England) (No. 27,698) prescribing Form of Certificate under Section 55 of the Public Health (London) Act, 1891.

To the several Sanitary Authorities for the execution of the Public Health (London) Act, 1891, in the administrative county of London:—

And to all others whom it may concern.

Whereas [*reciting Order dated Sept. 12th, 1889*].

Art. I. [*repeal of said Order of Sept. 12th, 1889*].

Art. II. On and after the first day of January, 1892, the form of certificate contained in the schedule hereto shall, until we otherwise prescribe, be the form for the purpose of any certificate to be given under sub-section (1) (b) of section 55 of the Public Health (London) Act, 1891, in the administrative county of London.

SCHEDULE.

The Public Health (London) Act, 1891.

Infectious Diseases Notification.

Certificate of Medical Practitioner.

To the Medical Officer of Health.

* _____

I hereby certify that in my opinion the person hereinafter named is suffering from an infectious disease to which section 55 of the Public Health (London) Act, 1891, applies (*see* note); and I further certify the following particulars required under the said section to be given in respect of such person:—

Name, in full of the patient	_____
Age of patient	_____
Sex	_____
Full postal address of house† of which patient is an inmate	_____
If the patient is an inmate of a hospital.....	_____
(a) Place from which the patient was brought to the hospital	_____
(b) Date at which patient was so brought ...	_____
Infectious disease from which the patient is suffering	_____
Whether the case has occurred—	
(a) In the private practice of the practitioner certifying	_____
or	
(b) In his practice as medical officer of a public body or institution; and, if so, of what body or institution	_____

Dated the _____ day of _____, 18 .

(Signed) _____, Medical Practitioner.

Address of person signing _____

Note.—This certificate must (under a penalty not exceeding forty shillings) be sent to the medical officer of health at his office or residence forthwith on the medical practitioner attending on or called in to visit the patient becoming aware that the patient is suffering from an infectious disease to which the section applies; namely, any of the following diseases:—small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names: typhus, typhoid, enteric, relapsing, continued or puerperal, and also any other infectious disease to which section 55 of the Public Health (London) Act, 1891, has been applied in the district.

* Insert the name of the district. Where the certificate refers to the inmate of a hospital it must be sent to the medical officer of health of the district in which is situate the place from which the inmate was brought to the hospital.

† In the case of a ship, boat, tent, van, shed, or similar structure used for human habitation, the name or description of the dwelling and the name of the place where it is situate should be given.

Given under the seal of office of the Local Government Board this third day of December, in the year one thousand eight hundred and ninety-one.

L.S.

HUGH OWEN, *Secretary.*

CHAS. T. RITCHIE, *President.*

THE SANITARY OFFICERS (LONDON) ORDER, 1891.

Regulations as to Medical Officers of Health and Sanitary Inspectors.
[8th December, 1891

TO THE SEVERAL SANITARY AUTHORITIES for the execution of the Public Health (London) Act, 1891, in the administrative county of London ;—

* * * * * * *

And to all others whom it may concern.

* * * * * * *

WHEREAS [*reciting General Orders dated March 28th*, 1889, *and October 21st*, 1889 ; *and the Pub. Hlth.* (*London*) *Act*, 1891, *sec.* 106 (1) *and* (3); *sec.* 107 (1), *and sec.* 108, *ante.*]

NOW THEREFORE, we, the Local Government Board, hereby order that on and after the first day of January, one thousand eight hundred and ninety-two, the above-cited orders dated, respectively, the twenty-eighth day of March, one thousand eight hundred and eighty-nine, and the twenty-first day of October, one thousand eight hundred and eighty-nine, shall be rescinded except so far as relates to any medical officer of health who on the first day of January, one thousand eight hundred and ninety-two, holds office under an appointment made before that date.

And we hereby order as follows with respect to the appointment, tenure of office, salary, and duties of every medical officer of health or sanitary inspector who shall be appointed by any sanitary authority in the administrative county of London on or after the first day of January, one thousand eight hundred and ninety-two, or who, having been appointed by such sanitary authority prior to that date, shall be re-appointed by them on or after that date, and who in either case shall not be appointed in pursuance of a temporary arrangement made with our sanction under section 109 of the Public Health (London) Act, 1891 :—

Appointment.

Art. 1. Before any appointment is made under this Order a statement shall be submitted to us containing the particulars mentioned in the form set forth in the schedule to this Order, and such other particulars as may from time to time be required by us :

Provided that where any such statement has been submitted to us under either of the above-cited Orders or under this Order no further statement under this article shall be necessary, unless the sanitary authority, on any appointment, propose to alter the terms of the appointment, or unless we require a fresh statement to be submitted.

Art. 2. When our approval has been given to the proposals contained in the statement so submitted, the sanitary authority shall proceed to the appointment of the officer accordingly : Provided that if the sanitary authority make the appointment before submitting such a statement as hereinbefore mentioned, the appointment shall be valid if approved by us.

Art. 3. An appointment shall not be made unless an advertisement specifying the district or part of a district for which such appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper or newspapers circulating in the district of the sanitary authority at least seven days before (*e*) the day so fixed.

Art. 4. Every officer shall be appointed, by a majority of the members present and voting on the question (*f*), at a meeting of the sanitary authority, but such appointment shall be subject to our approval.

(*e*) **At least seven days before.** See note to sec. 19 (3) of the Pub. Hlth. (London) Act, 1891, *ante*, for the meaning of this expression.

(*f*) **Majority present and voting.** This provision is inconsistent with secs. 28 and 38 of the Met. Man. Act, 1855, which require that at the meetings of the vestries and district boards all questions shall be decided by the votes of the majority of members present.

Art. 5. Every appointment shall, within seven days after (*g*) it is made be reported to us by the clerk to the sanitary authority.

Art. 6. Upon the occurrence of a vacancy, the sanitary authority shall proceed to make a fresh appointment.

Art. 7. If a vacancy be about to occur on notice given by an officer of an intended resignation to take effect on a future day, or on notice given by the sanitary authority in pursuance of article 12 of this Order, or, in the case of an officer who holds his office for a specified term, by the term coming to an end, the sanitary authority may re-appoint such officer, or appoint his successor, at any time subsequent to the giving of the notice, or within three calendar months next before the expiration of the term.

Art. 8. If in the case of an officer holding office on the first day of January, one thousand eight hundred and ninety-two, the sanitary authority desire to re-appoint him, or if in the case of a sanitary inspector who may have been appointed under this Order for a specified term the sanitary authority should desire to re-appoint him for a further term or otherwise in conformity with the provisions of this Order, it shall not be necessary for notice of the proposed re-appointment to be given by advertisement, if notice be given at one of the two ordinary meetings of the sanitary authority next preceding the meeting at which the re-appointment is to be made.

Tenure of Office.

Art. 9. Every medical officer of health shall continue to hold office until he die, or resign, or be removed by the sanitary authority with our consent, or be removed by us, or be proved to be insane by evidence which we shall deem sufficient.

Art. 10. Every sanitary inspector shall continue to hold office for such period as the sanitary authority may, subject to our approval, determine at the time of his appointment, or until he die or resign, or be removed by such authority or by us, or be proved to be insane by evidence which we shall deem sufficient.

Art. 11. The sanitary authority may, at their discretion, suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to us. The suspension may in the case of a medical officer of health be removed by the sanitary authority or by us, and in the case of a sanitary inspector by the sanitary authority, and, in either case, if the suspension be removed the officer shall forthwith resume the performance of his duties.

Art. 12. Where any change in the extent of the area for which any medical officer of health is appointed or in his duties or salary may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with our consent but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Art. 13. A person shall not be appointed as medical officer of health or sanitary inspector who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 14. The sanitary authority shall pay to every officer such salary as may be approved by us:

Provided always that the sanitary authority may, with our approval, pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district.

Art. 15. The salary of every officer shall be payable up to the day on which he ceases to hold office and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of article 13 of this Order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives:

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under article 9 or

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(*g*) **Within seven days after.** See note to sec. 211 of the Met. Man. Act, 1855, *ante*, for the meaning of this expression.

article 10 of this Order, shall not be entitled to any salary from the date of such suspension.

Art. 16. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he would become entitled at the termination of the quarter.

Art. 17. All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act, 1870" (*h*).

Duties of Medical Officer of Health.

Art. 18. The following shall be the duties of a medical officer of health as regards the district or part of a district for which he is appointed (in this article referred to as "his district"):—

(1) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within his district.

(2) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within his district and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3) He shall by inspection of his district, both systematically at certain periods and at intervals as occasion may require, keep himself informed of the conditions injurious or dangerous to health existing therein.

(4) He shall be prepared to advise the sanitary authority on all matters affecting the health of his district, and on all sanitary points involved in the action of the sanitary authority; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such byelaws and regulations as they may have power to make.

(6) On receiving information of the outbreak of any dangerous infectious disease within his district, he shall visit without delay the spot where the outbreak has occurred, and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and shall take such measures for the prevention of disease as he is legally authorised to take under any statute in force in the district or by any resolution of the sanitary authority.

(7) Subject to the instructions of the sanitary authority, he shall direct or superintend the work of the sanitary inspector or sanitary inspectors in the way and to the extent that the sanitary authority shall approve, and on receiving information from any sanitary inspector that his intervention is required in connection with any nuisance, he shall, as early as practicable, take such steps as he is legally authorised to take under any statute in force in the district, or by any resolution of the sanitary authority, as the circumstances of the case may justify and require.

(8) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal intended for the food of man which is

(*h*) **Apportionment Act, 1870** (33 & 34 Vict. c. 35). Sec. 1 provides that periodical payments in the nature of income shall be considered as accruing from day to day. Sec. 2 provides that the apportioned part of such payment shall be payable or recoverable when the next entire portion shall become due and payable, and not before. By sec. 4, all persons and their heirs, &c., are given the same remedies for recovering the apportioned part when payable, as they would have had for recovering the entire portion.

exposed for sale or deposited in any place for the purpose of sale or of preparation for sale, and any article, whether solid or liquid, intended for the food of man, and sold or exposed for sale, or deposited in any place for the purpose of sale or of preparation for sale. If such animal or article appears to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, he shall seize and carry away the same himself or by an assistant in order to have the same dealt with by a justice according to the provisions of section 47 of the Public Health (London) Act, 1891.

(9) He shall perform all the duties imposed upon him by any byelaws and regulations of the sanitary authority, duly confirmed where confirmation is legally required, in respect of any matter affecting the public health, and touching which the sanitary authority are authorised to frame byelaws and regulations.

(10) He shall inquire into any offensive process of trade carried on within his district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(11) He shall from time to time inspect any bakehouses which are workshops, and are situate within his district, and he shall thereupon report to the sanitary authority whether any steps are necessary to be taken for the purpose of enforcing, as respects such bakehouses, the provisions of sections 34, 35, and 81 of the Factory and Workshop Act, 1878, and sections 15 and 16 of the Factory and Workshop Act, 1883 (*i*).

(12) He shall attend at the office of the sanitary authority or at some other appointed place, at such stated times as they may direct.

(13) He shall from time to time report in writing to the sanitary authority his proceedings and the measures which may require to be adopted for the improvement or protection of the public health in his district. He shall in like manner report with respect to the sickness occurring within his district, and the mortality thereof, so far as he is able to ascertain the same.

(14) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books whenever required, to the sanitary authority.

(15) He shall also make an annual report to the sanitary authority, up to the thirty-first day of December in each year, comprising a summary of the action taken, or which he has advised the sanitary authority to take, during the year for preventing the spread of disease, and an account of the sanitary state of his district generally, at the end of the year. The report shall also contain an account of the inspections and inquiries which he has made as to conditions injurious or dangerous to health existing in his district, and of the proceedings in which he has taken part or advised under any statute, so far as such proceedings relate to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. The report shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, to factories and workshops, and to dairies. The report shall also contain tabular statements (on forms to be supplied by us, or to the like effect,) of the sickness and mortality within his district, classified according to diseases, ages, and localities:

Provided that, if the medical officer of health shall resign or be removed before the thirty-first day of December in any year, he shall thereupon make the like report for that part of the year during which he has held office.

(16) He shall give immediate information to us of any outbreak of dangerous epidemic disease within his district. He shall transmit to us a copy of each annual report and of any special report made by him. On his advising the sanitary authority with a view to their requiring the closure of any school or schools, in pursuance of the code of regulations approved by the Education

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(*i*) **Factory and Workshop Acts, 1878 and 1883.** *Post*, vol. ii. tit. "*Factory and Workshops.*"

Department (*k*) and for the time being in force, he shall forthwith report specially to us the grounds of his advice.

(17) At the same time that he gives information to us of an outbreak of dangerous epidemic disease, or transmits to us a copy of his annual report or of any special report, he shall give the like information or transmit a copy of such report to the London County Council.

(18) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by us, and the lawful orders and directions of the sanitary authority applicable to his office.

(19) Whenever we shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875, as extended to London by section 113 of the Public Health (London) Act, 1891, and shall declare the regulations so made to be in force within his district or any part thereof, he shall observe such regulations, so far as the same relate to or concern his office.

Duties of Sanitary Inspector.

Art. 19. The following shall be the duties of a sanitary inspector as regards the district or part of a district for which he is appointed (in this article referred to as "his district"):—

(1) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or, in cases where no such directions are required, without such directions, all the duties specially imposed upon a sanitary inspector by any statute or statutes, or by the orders issued by us, so far as the same apply to his office.

(2) He shall attend all meetings of the sanitary authority when so required.

(3) He shall by inspection of his district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement.

(4) On receiving notice of the existence of any nuisance within his district, or of the breach of any byelaws or regulations made by the sanitary authority for the suppression of nuisances, or of any byelaws made by the London County Council which it is the duty of the sanitary authority to enforce, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of byelaws or regulations.

(5) He shall report to the sanitary authority any noxious or offensive businesses, trades, or manufactories established within his district, and the breach or non-observance of any byelaws or regulations made in respect of the same.

(6) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places in which is exposed for sale, or in which is deposited for the purpose of sale or of preparation for sale, any animal, or any article, whether solid or liquid, intended for the food of man, and examine any such animal or article which may be therein. If any such animal or article appears to him to be diseased, or unsound, or unwholesome, or unfit for the food of man, he shall seize and carry away the same himself or by an assistant in order to have the same dealt with by a justice according to the provisions of section 47 of the Public Health (London) Act, 1891: Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.

(*k*) **Closing schools.** The Education Department, acting under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), issues annually a Code of Regulations for public elementary schools, as defined by that Act. Article 88 of the Regulations for 1897 provides that:—"The managers must at once comply with any notice of the sanitary authority of the district in which the school is situated, or any two members thereof acting on the advice of the medical officer of health, requiring them for a specified time, with a view to preventing the spread of disease, or any danger to health likely to arise from the condition of the school, either to close the school or to exclude any scholars from attendance, but after complying they may appeal to the Department if they consider the notice to be unreasonable." Where, under similar provisions of an earlier code, an urban sanitary authority ordered a public elementary school to be closed, it was held that they were not liable to the master for his consequent loss of fees. *Roberts* v. *Falmouth Sanitary Authority*, 52 J. P. 741.

(7) He shall, when and as directed by the sanitary authority, procure and submit samples of food, drink, or drugs suspected to be adulterated, to be analysed by the analyst appointed under "The Sale of Food and Drugs Act, 1875," and upon receiving a certificate stating that the articles of food, drink, or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act (*l*).

(8) Whenever it appears to him that the intervention of the medical officer of health is necessary in connection with any nuisance, he shall forthwith inform such officer thereof. He shall also, subject to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by a sanitary inspector under the Public Health (London) Act, 1891, or under any other statute or statutes.

(9) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health (London) Act, 1891, or under any other statute or statutes, and shall keep any other systematic records that the sanitary authority may require.

(10) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of sanitary inspector relate.

(11) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within his district.

(12) In matters not specifically provided for in this Order, he shall observe and execute any instructions issued by us, and the lawful orders and directions of the sanitary authority, applicable to his office.

Art. 20. Where in any district there shall be two or more sanitary inspectors nothing in this Order shall be deemed to prevent the sanitary authority from distributing among them the duties directed by this Order to be performed by a sanitary inspector.

Interpretation of Terms.

Art. 21. The expressions used in this Order shall have the same meaning as expressions in the Public Health (London) Act, 1891.

Title of Order.

Art. 22. This Order may be cited as "The Sanitary Officers (London) Order, 1891."

SCHEDULE.

PUBLIC HEALTH (LONDON) ACT, 1891.

Proposal for Appointment of Medical Officer of Health or Sanitary Inspector.

(Under the provisions of the General Order of the Local Government Board dated the 8th of December, 1891.)

1. State the name of the sanitary authority by whom the appointment is proposed to be made.

2. If the sanitary authority are a district board of works, state the names of the parishes, either wholly or in part, comprised in the district or area proposed to be assigned to the medical officer of health or sanitary inspector.

The words "part of" should be prefixed in those cases where only a part of a parish is proposed to be included.

(*l*) **Sale of Food and Drugs Act, 1875.** *Post*, vol. ii. tit. "*Food and Drugs.*"

3. The extent (in acres) of the district or area for which the appointment is to be made.

   If the exact extent is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.

4. The population, according to the last published census, of the district or area for which the appointment is to be made.

   If the exact population is not known, it should be estimated as nearly as practicable, and the word "estimated" should be added.

5. If in the case of a sanitary inspector the appointment is to be made for a temporary period, state the term for which it is proposed that the appointment should be made.

6. The amount of the salary proposed.

7. Whether it is intended that the officer should give his whole time to the performance of the duties of his office.

8. The date on which it is proposed that he should commence the duties of his office.

Signature _____

Clerk to the Sanitary Authority.

Date _____

Given under the seal of office of the Local Government Board, this eighth day of December, in the year one thousand eight hundred and ninety-one.

L. S.

HUGH OWEN,
Secretary.

CHAS. T. RITCHIE,
President.

REGULATIONS AS TO CHOLERA, YELLOW FEVER, AND PLAGUE: PORTS.

[9th November, 1896

To ALL PORT SANITARY AUTHORITIES:—
To all other sanitary authorities as herein defined:—
* * * * * * *
To all medical officers of health of the sanitary authorities aforesaid:—
* * * * * * *
And to all others whom it may concern.

WHEREAS [*reciting sec.* 130 *of the Public Health Act*, 1875, *as amended by the Public Health Act*, 1896].

And whereas [*reciting sec.* 1 *of the Public Health Act*, 1896].

And whereas [*reciting Orders dated respectively the 28th day of August*, 1890, *and the 6th day of September*, 1892].

NOW THEREFORE, we, the Local Government Board, do hereby revoke the aforesaid Orders, except in so far as they may apply to any proceedings now pending, and we do, by this our Order, and in exercise of the powers conferred on us by the Public Health Act, 1875, the Public Health (London) Act, 1891, and the Public Health Act, 1896 (*m*), and every other power enabling us in that behalf, make the following regulations, and declare that they shall be enforced and executed by the authorities and officers hereinafter mentioned:—

PART I.

Art. 1. In this Order—

The term "ship" includes vessel or boat;

The term "officer of customs" includes any person acting under the authority of the commissioners of Her Majesty's customs;

The term "master" used in relation to a ship, includes the officer, pilot, or other person for the time being in charge or command of the ship;

The term "cholera" includes choleraic diarrhœa;

The term "sanitary authority" means every port sanitary authority, and every council of a county borough and every urban or rural district council whose district includes or abuts on any part of a customs port, which part is not within the jurisdiction of a port sanitary authority;

The term "local authority" means any council of a county borough or any urban or rural district council, and in the administrative county of London any sanitary authority as defined by the Public Health (London) Act, 1891;

The term "medical officer of health" includes any duly qualified medical practitioner appointed or employed by a sanitary authority to act in the execution of this Order.

The term "infected" means infected with cholera, yellow fever, or plague: provided that every ship shall be deemed infected in which there is or has been during the voyage, or during the stay of such ship in the port of departure or in a port in the course of such voyage, any case of cholera, yellow fever, or plague.

PART II.

Art. 2.—(1) The officer of customs who, on the arrival of any ship from foreign, shall visit the ship shall ascertain, so far as possible, whether such ship is infected, and if he have any reason to suspect that the ship is infected or has come from any infected place shall require the master of the ship, or the surgeon, if the ship carries a surgeon, to give (in writing under his hand and in the form hereunto appended or in a form to the like effect) a true answer to the following question:—

Question.—Has any case or suspected case of—
cholera,
yellow fever, or
plague
occurred in the ship , of which you are , during the voyage from , or during the stay of the ship in that port or in any other port in the course of the voyage?

Answer.— cases or suspected cases of
occurred on board the during the voyage from [*or* during the stay of the ship in the port of].

or

No case or suspected case of cholera, yellow fever, or plague occurred on board the during the voyage from , or during the stay of the ship in that port or in any other port in the course of the voyage.

Signed_____,

Master [*or* surgeon] of the_____

(*m*) **Pub. Hlth. Acts.** See the recited provisions of these Acts, *ante*.

(2) The officer of customs who, on the arrival of any ship from foreign, shall visit such ship shall, if he find, or have reason to suspect, that the ship is infected, detain such ship, and order the master forthwith to moor or anchor the same in such position as such officer of customs shall direct; and thereupon the master shall forthwith moor or anchor the ship accordingly.

Art. 3. Whilst such ship shall be so detained, no person (other than an officer of customs or a person acting in the execution of this Order) shall leave the same.

Art. 4. The officer of customs detaining any ship as aforesaid shall forthwith give notice thereof, and of the cause of such detention, to the sanitary authority of the place where such ship is lying.

Art. 5. Such detention by the officer of customs shall cease as soon as the ship shall have been duly visited and examined by the medical officer of health; or, if the ship shall, upon such examination, be found to be infected, as soon as the same shall be moored or anchored in pursuance of article 10.

Provided, that if the examination be not commenced within twelve hours after the ship shall have been moored or anchored in pursuance of subdivision 2 of article 2, the ship shall, on the expiration of the said twelve hours, be released from detention.

PART III.

Art. 6. Every port sanitary authority and every other sanitary authority within whose district persons are likely to be landed from ships coming foreign shall, with the approval of the chief officer of customs of the port, fix some place where any ship may be moored or anchored for the purpose of article 10; and shall make provision for the reception of patients and persons suffering from cholera, yellow fever, and plague, and removed under articles 13 and 14. The place to be fixed as aforesaid, where any ship may be moored or anchored for the purpose of article 10, shall be some place within the jurisdiction or district of the sanitary authority, unless we otherwise consent; in which case the place so fixed shall, for the purposes of this Order, be deemed to be within such jurisdiction or district.

Provided that, in the case of any dockyard port for which a Queen's harbour master has been appointed, the place where any ship shall be moored or anchored for the purpose of article 10 shall from time to time be fixed by the port sanitary authority with the approval of the Queen's harbour master, instead of with that of the chief officer of customs of the port.

Provided also, that where, in pursuance of the above-cited Order of the twenty-eighth day of August, one thousand eight hundred and ninety, or of any Order by the said Order revoked, places have been fixed for the mooring or anchoring of ships for the purposes of the regulations by this Order revoked, such places shall be deemed to have been so fixed in pursuance of and for the purposes of this Order.

Art. 7. The sanitary authority, on notice being given to them by an officer of customs, under article 4, shall forthwith cause the ship in regard to which such notice shall have been given, to be visited and examined by their medical officer of health for the purpose of ascertaining whether such ship is infected.

Art. 8. The medical officer of health, if he have reason to suspect that any ship coming or being within the jurisdiction or district of the sanitary authority, whether examined by the officer of customs or not, is infected, shall, or, if he have reason to suspect that the ship has come from an infected place, may, visit and examine such ship for the purpose of ascertaining whether such ship is infected; and may make the like visit and examination in the case of any ship coming or being within the jurisdiction of the sanitary authority which has come from an infected place. The master of any such ship shall permit the same to be so visited and examined.

The master of any such ship shall also, on being required so to do by the medical officer of health, cause the ship to be brought to, and, if necessary, moored or anchored in some convenient place while the same shall be visited and examined; but due regard shall be had to the safety of the ship and to the convenience of navigation.

Art. 9. If the medical officer of health on making such examination as aforesaid (whether under article 7 or under article 8) shall be of opinion that the ship is infected, he shall forthwith give a certificate in duplicate in the following form,

or to the like effect, and shall deliver one copy to the master, and retain the other copy or transmit it to the sanitary authority. He shall also give to us information as to the arrival of the ship, and such other particulars as we may require.

Certificate.

_____ *day of* _____, 189 _.

_____ DISTRICT [*or* TOWN] COUNCIL.

or

_____ PORT SANITARY AUTHORITY.

I hereby certify that I have examined the ship _____ of _____, now lying in the port of _____ [*or detained at* _____], and that I find that such ship is infected with [Cholera, *or* Yellow Fever, *or* Plague].

_____

Medical Officer of Health [or Medical Practitioner appointed or employed by the Sanitary Authority].

Art. 10. The master of any ship so certified to be infected shall thereupon moor or anchor such ship at the place fixed for that purpose under article 6, and such ship shall remain there until the requirements of this Order have been duly fulfilled.

Art. 11. No person (other than an officer of customs or a person acting in the execution of this Order) shall leave any such ship until the examination hereinafter mentioned shall have been made.

Art. 12. The medical officer of health shall, as soon as possible after any such ship has been certified to be infected, examine every person on board the same, and in the case of any person suffering from cholera, yellow fever, or plague, or from any illness which the medical officer suspects may prove to be cholera, yellow fever, or plague, shall certify accordingly.

Art. 13. Every person certified by the medical officer of health to be suffering from cholera, yellow fever, or plague shall be removed if his condition admit of it, to some hospital or other suitable place appointed for that purpose by the sanitary authority; and no person so removed shall leave such hospital or place until the medical officer of health shall have certified that such person is free from the said disease.

If any person so certified to be suffering from cholera, yellow fever, or plague cannot be removed, the ship shall remain subject, for the purposes of this Order, to the control of the medical officer of health; and such person shall not be removed from or leave the ship, except with the consent in writing of the medical officer of health.

Art 14. Any person certified by the medical officer of health to be suffering from any illness which such officer suspects may prove to be cholera, yellow fever, or plague, may either be detained on board the ship for any period not exceeding two days, or be taken to some hospital or other suitable place appointed for that purpose by the sanitary authority, and detained there, for a like period, in order that it may be ascertained whether the illness is or is not cholera, yellow fever, or plague.

If any such person, while so detained, shall be certified by the medical officer of health to be suffering from cholera, yellow fever, or plague the provisions of article 13 shall apply.

Art. 15. No person on board such a ship as is mentioned in article 12 who has not been certified as required by that article shall be permitted to land unless he satisfy the medical officer as to his name, intended place of destination, and intended address at such place.

Such name, intended place of destination, and address shall forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit the same to the local authority of the district in which such intended place of destination is situate.

Every such person who, within forty-eight hours after landing, shall arrive at

any place of destination or address other than such place or address as aforesaid, shall forthwith upon such arrival notify in writing his place of destination and address to the medical officer of health of the sanitary authority, or to the local authority, of the district in which such place is situate.

Art. 16. The medical officer of health shall, in the case of every ship certified to be infected, give directions, and take such steps as may appear to him to be necessary, for preventing the spread of infection, and the master of the said ship shall forthwith carry into execution such directions as shall be so given to him.

Art. 17. In the event of any death from cholera, yellow fever, or plague taking place on board such ship while detained under article 10, the master shall, as directed by the sanitary authority or the medical officer of health, either cause the dead body to be taken out to sea, and committed to the deep, properly loaded to prevent its rising, or shall deliver it into the charge of the said authority, who shall thereupon cause the same to be otherwise lawfully and properly disposed of.

Art. 18. The master shall cause the clothing and bedding and other articles of personal use likely to retain infection which have been used by any person who may have suffered from cholera, yellow fever, or plague on board such ship, or who, having left such ship, shall have suffered from cholera, yellow fever, or plague during the stay of such ship in any port, to be disinfected or destroyed; and if the master shall have neglected to do so before the ship arrives in port, he shall forthwith, upon the direction of the sanitary authority or the medical officer of health, cause the same to be disinfected or destroyed, as the case may require; and if the said master neglect to comply with such direction within a reasonable time, the sanitary authority shall cause the same to be carried into execution.

Art. 19. The master shall cause the ship to be disinfected, and every article therein, other than those last described, which may probably be infected, to be disinfected or destroyed, according to the directions of the medical officer of health.

Art. 20. Where a ship is not ascertained, or certified to be infected, but has passengers on board who are in a filthy or otherwise unwholesome condition, or has come from a place infected with cholera, yellow fever, or plague, the medical officer of health may, if in his opinion it is desirable with a view to checking the introduction or spread of cholera, yellow fever, or plague, give a certificate in duplicate in the following form, or to the like effect, and shall deliver one to the master, and retain the other or transmit it to the sanitary authority:—

CERTIFICATE.

day of , 189 .

_____

_____ DISTRICT [*or* TOWN] COUNCIL.

or

_____ PORT SANITARY AUTHORITY.

I hereby certify that I have examined the ship
from , now in the port of ,
and that such ship has passengers on board in a filthy or otherwise unwholesome condition [*or* has come from an infected place], and that, in my opinion, it is desirable with a view to checking the introduction or spread of cholera, yellow fever, or plague, that the persons on board such ship should not be allowed to land unless they satisfy me as to their names, places of destination, and addresses at such places.

Signed _____,
Medical Officer of Health (or Medical Practitioner appointed or employed by the Sanitary Authority).

Art. 21. When such certificate has been given, no person on board the ship shall leave or be allowed to leave the same unless he satisfy the medical officer of health as to his name, intended place of destination, and intended address at such place; and such name, intended place of destination, and address shall

forthwith be given by the medical officer of health to the clerk to the sanitary authority, and such clerk shall thereupon transmit the same to the local authority of the district in which such intended place of destination is situate. Every such person who, within forty-eight hours after landing, shall arrive at any place of destination or address other than such place or address as aforesaid shall, forthwith upon such arrival, notify in writing his place of destination and address to the medical officer of health of the sanitary authority or to the local authority of the district in which such place is situate.

Art. 22. If the medical officer of health have reason to believe that any ship coming or being within the jurisdiction of the sanitary authority is infected, or has come from an infected place, he may direct all bilge water and water ballast to be pumped out in some suitable place before such ship enters any dock or basin:

Provided that, in every case where there may be reasonable cause to apprehend that the ship may be endangered by the removal of the water ballast, the medical officer of health may cause any tank or other receptacle containing the water ballast to be sealed, and thenceforward, so long as the ship remains within the jurisdiction of the sanitary authority, no person shall without the permission of the medical officer of health break or remove such seal, or discharge or remove from such tank or receptacle any part of the water ballast.

On the sanitary authority providing a proper supply of water for drinking and cooking purposes for persons on board any such ship, the medical officer of health may direct all casks or tanks on board the ship containing water for the use of such persons to be emptied and cleansed, and the master shall cause the said direction to be carried into effect.

Art. 23. The master of any ship, or any other person, shall answer truly all such questions put to him by and give all such information to any officer of customs or medical officer of health as may be necessary for any purpose of this order; and no person who is required in pursuance of this order to give to the medical officer of health or to notify to any local authority the name, and intended place of destination and address of such person shall knowingly give or notify a false or fictitious name, place of destination or address, or refuse to give or notify as aforesaid the true name, intended place of destination and address of such person.

Art. 24. The sanitary authority may appoint one or more legally qualified medical practitioners to act in the execution of this Order, either in place of or as an assistant or assistants to the medical officer of health, and may pay such practitioner or practitioners reasonable remuneration for his or their services.

PART IV.

Art. 25. The master of every ship infected with cholera, yellow fever, or plague shall, when within three miles of the coast of any part of England or Wales, caused to be hoisted at the masthead, or where best seen, a large flag of yellow and black, borne quarterly, and shall keep the same displayed during the whole of the time between sunrise and sunset, and no person (other than an officer of customs or a person acting in the execution of this Order) shall leave such ship until after such visit of the officer of customs as is mentioned in article 2, or until after the visit of the medical officer of health in pursuance of article 8.

PART V.

Art. 26. Nothing in this Order shall render liable to detention, disinfection, or destruction any article forming part of any mail (other than a parcel mail) conveyed under the authority of the postmaster-general, or of the postal administration of any foreign government, or shall prejudicially affect the delivery in due course of any such mail (other than a parcel mail) to the post office in accordance with the provisions of the Post Office Acts.

Given under the seal of office of the Local Government Board, this ninth day of November, in the year one thousand eight hundred and ninety-six.

HENRY CHAPLIN,
President.

L.S.

HUGH OWEN,
Secretary.

LONDON BUILDING ACT, 1894.

57 & 58 Vict. ch. ccxiii. An Act to consolidate and amend the Enactments relating to Streets and Buildings in London.
[25th August, **1894**

[*Preamble recites the Acts in fourth schedule, post.*]

Part I.—Introductory.

Short title.

1. This Act may be cited as the London Building Act 1894.

Division of Act into parts.

2. This Act shall be divided into parts as follows:—

Part I.—Introductory.
Part II.—Formation and Widening of Streets.
Part III.—Lines of Building Frontage.
Part IV.—Naming and Numbering of Streets.
Part V.—Open Spaces about Buildings and Height of Buildings.
Part VI.—Construction of Buildings.
Part VII.—Special and Temporary Buildings and Wooden Structures.
Part VIII.—Rights of Building and Adjoining Owners.
Part IX.—Dangerous and Neglected Structures.
Part X.—Dangerous and Noxious Businesses.
Part XI.—Dwelling-houses on Low-lying Land.
Part XII.—Sky Signs.
Part XIII.—Superintending Architect and District Surveyors.
Part XIV.—Byelaws.
Part XV.—Legal Proceedings.
Part XVI.—Miscellaneous.

Commencement of Act.

3. This Act shall come into operation on and shall take effect from the first day of January next after the passing thereof which date is in this Act referred to as the commencement of this Act.

Extent of Act.

4. This Act shall save so far as is otherwise provided extend to London (*a*) and no further:

Provided always that in addition to any exemption referring to the commissioners of sewers contained in this Act nothing in this Act contained shall in any way take away alter prejudice or affect any of the powers privileges exemptions jurisdictions or authorities given to or vested in the commissioners of sewers (*b*) by or under any Act of Parliament and existing immediately before the passing of this Act notwithstanding the repeal of the Acts specified in the fourth schedule hereto.

Definitions.
"Street."

5. In this Act unless the context otherwise requires—

(1) The expression "street" (*c*) means and includes (*d*) any high-

(*a*) **London,** i.e., the administrative county of London. Sec. 5 (40), *post.*

(*b*) **Commissioners of sewers,** i.e., the Commissioners of Sewers of the City of London. Sec. 5 (46), *post.* As to their constitution and powers, see note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante.*

(*c*) **Street.** See cases cited in note (*f*) to sec. 7, *post.* The Towns Police Clauses Act, 1847 (10 & 11 Vict. c. 89), sec. 3, enacts that "street" is to extend to and include any road, square, alley, and thoroughfare, or public passage. *Held*, that the Act only applies to places over which the public have a right of passage, and does not apply to the approach to a railway station belonging to the railway company. *Curtis* v. *Embery*, L. R. 7 Ex. 369: 42 L. J. M. C. 39.

way (*e*) and any road bridge lane mews footway square court alley passage whether a thoroughfare or not and a part of any such highway road bridge lane mews footway square court alley or passage. 57 & 58 Vict. ch. ccxiii.

(2) The expression "way" includes any public road way or footpath not being a street and any private road way or footpath which it is proposed to convert into a highway or to form lay out or adapt as a street. "Way."

(3) The expression "roadway" in relation to any street or way means and includes the whole space open for traffic whether carriage traffic and foot traffic or foot traffic only. "Roadway."

(4) The term "centre of the roadway" means— "Centre of roadway."

(a) In relation to any street or way of which the centre of the roadway has been ascertained or defined by the council or the superintending architect previously to or after the commencement of this Act the centre of the roadway as so ascertained or defined;

(b) In relation to any street or way of which the centre of the roadway shall not have been ascertained or defined by the council or the superintending architect where the roadway opposite the site of the building in question shall since the twenty-second day of July one thousand eight hundred and seventy-eight have been widened the centre of the roadway as existing immediately before the date of such widening or where it shall not have been so widened the actual centre of the existing roadway:

For the purpose of any enactment in this Act referring to the centre of the roadway the superintending architect may at any time define the line constituting the centre of the roadway in the case of a street formed or laid out after the eighteenth day of August one thousand eight hundred and ninety and the line so defined shall continue to be deemed the centre for such purpose notwithstanding that the actual centre of the roadway may have become altered by reason of the roadway having been widened either on one side only or on both sides to an unequal extent.

(5) The expression "the prescribed distance" (*f*) means twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only. "Prescribed distance."

(6) The expression "new building" means and includes (*d*)— "New building."

Any building (*g*) erected after the commencement of this Act;

Any building which has been taken down for more than one-half of

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See also the definition of "street" in the Met. Man. Act, 1855, sec. 250, *ante*, and of "new street" in the Met. Man. Amend. Act, 1862, sec. 112, *ante*, and cases cited in notes thereto.

(*d*) **Means . . . includes.** For the distinction between these expressions, see note (*p*) to sec. 250 of the Met. Man. Act, 1855, *ante*.

(*e*) **Highway.** As to what is a highway, see note (*y*) to sec. 96 of the Met. Man. Act, 1855, *ante*.

(*f*) **Prescribed distance.** This may be extended by the County Council to a distance not exceeding thirty feet, under certain circumstances. Sec. 13 (2), *post*.

(*g*) **Building** is not defined by this Act. A large wooden structure without foundations, the framework merely resting on wooden joists, and intended to be permanently used as a shop, was held to be a building within the repealed Metropolitan Building Act, 1855. *Stevens* v. *Gourley*, 7 C. B. (N. S.) 99; 29 L. J. C. P. 1. A wooden

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its cubical extent and re-erected or commenced to be re-erected wholly or partially on the same site after the commencement of this Act;

Any space between walls and buildings which is roofed or commenced to be roofed after the commencement of this Act.

"Bressummer." (7) The expression "bressummer" means a wooden beam or a metallic girder which carries a wall.

"Level of the ground." (8) The expression "level of the ground" means the mean level of the ground as determined by the district surveyor or in the event of disagreement by the superintending architect or on appeal by the tribunal of appeal.

"Foundation." (9) The expression "foundation" applied to a wall having footings means the solid ground or artificially formed support on which the footings of the wall rest but in the case of a wall carried by a bressummer means such bressummer.

"Base." (10) The expression "base" applied to a wall means the underside of the course immediately above the footings if any or in the case of a wall carried by a bressummer above such bressummer.

"Ground storey." (11) The expression "ground storey" means that storey of a building to which there is an entrance from the outside on or near the level of the ground and where there are two such storeys then the lower of the two:

Provided that no storey of which the upper surface of the floor is more than four feet below the level of the adjoining pavement shall be deemed to be the ground storey.

"Basement storey." (12) The expression "basement storey" means any storey of a building which is under the ground storey.

"First storey." (13) The expression "first storey" means that storey of a building which is next above the ground storey the successive storeys above the first storey being the second storey the third storey and so on to the topmost storey.

"Topmost storey." (14) The expression "topmost storey" means the uppermost storey in a building whether constructed wholly or partly in the roof or not.

"External wall." (15) The expression "external wall" means an outer wall or vertical enclosure of any building not being a party wall.

"Party wall." (16) The expression "party wall" (*h*) means—

(a) A wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons; or

(b) A wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners (*i*).

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erection on wheels, which was placed at the corner of a street, and used as a butcher's shop, was held to be a new building within the meaning of a local Act. *Richardson* v. *Brown*, 49 J. P. 661. A house erected on the surface of the ground, without foundations, is a building within the Met. Man. Act, 1855, sec. 204, *ante*, which prohibits the erection of buildings over sewers. *Poplar Dist. Bd.* v. *Knight*, E. B. & E. 408; 28 L. J. M. C. 37. See also note (*s*) to sec. 22, *post*.

(*h*) **Party wall.** A wall may be a "party wall" as to part of its length only (sec. 58, *post*); or part of its ~~breadth~~ height only. *Drury* v. *Army and Navy Co-operative Supply, Ltd.*, *post*, p. 426.

(*i*) **Footings on lands of different owners.** See sec. 87 (6), *post*.

(17) The expression "cross wall" (*k*) means a wall used or constructed to be used in any part of its height as an inner wall of a building for separation of one part from another part of the building that building being wholly in or being constructed or adapted to be wholly in one occupation. 57 & 58 Vict. ch. ccxiii. "Cross wall."

(18) The expression "party fence wall" means a wall used or constructed to be used as a separation of adjoining lands of different owners and standing on lands of different owners and not being part of a building but does not include a wall constructed on the land of one owner the footings of which project into the land of another owner (*l*). "Party fence wall."

(19) The expression "party arch" means an arch separating adjoining buildings storeys or rooms belonging to different owners or occupied or constructed or adapted to be occupied by different persons or separating a building from a public way or a private way leading to premises in other occupation. "Party arch."

(20) The expression "party structure" means a party wall and also a partition floor or other structure separating vertically or horizontally buildings storeys or rooms approached by distinct staircases or separate entrances from without. "Party structure."

(21) The expression "height" (*m*) in relation to any building means the measurement taken from the level of the footway (if any) immediately in front of the centre of the face of the building or (where there is no such footway) from the level of the ground before excavation to the level of the top of the parapet or where there is no parapet to the level of the top of the external wall or (in the case of gabled buildings) to the base of the gable. "Height."

(22) The expression "area" (*n*) applied to a building means the superficies of a horizontal section thereof made at the point of its greatest surface inclusive of the external walls and of such portions of the party walls as belong to the building. "Area."

(23) The expression "square" applied to the measurement of the area of a building means the space of 100 superficial feet. "Square."

(24) The expression "cubical extent" applied to the measurement of a building means the space contained within the external surfaces of its walls and roof and the upper surface of the floor of its lowest storey. "Cubical extent."

(25) The expression "dwelling-house" means a building used or constructed or adapted to be used wholly or principally for human habitation. "Dwelling-house."

(26) The expression "domestic building" (*o*) includes a dwelling-house and any other building not being a public building or of the warehouse class. "Domestic building."

(27) The expression "public building" (*p*) means a building used or "Public building."

(*k*) **Cross-wall.** See also sched. 1, pt. ii. "*Miscellaneous*," rr. 1 and 2, *post*.

(*l*) **Footings on lands of different owners.** See sec. 87 (6), *post*.

(*m*) **Height.** See also sec. 201 (10) and (11), *post*.

(*n*) **Area.** See also sec. 54, *post*.

(*o*) **Domestic building.** See also sec. 39, *post*.

(*p*) **Public building.** An ambulance station built by the direction of the metropolitan asylum managers, consisting of several buildings having a separate access, and not structurally connected with the hospital, was held not be a public building within the meaning of the repealed Metropolitan Building Act, 1855, sec. 3. *Josolyne* v. *Meeson*, 53 L. T. (N. S.) 319; 49 J. P. 805.

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constructed or adapted to be used as a church chapel or other place of public worship or as a school college or place of instruction (not being merely a dwelling-house so used) or as a hospital workhouse public theatre public hall public concert-room public ballroom public lecture-room public library or public exhibition-room or as a public place of assembly or used or constructed or adapted to be used for any other public purpose also a building used or constructed or adapted to be used as an hotel lodging-house home refuge or shelter where such building extends to more than two hundred and fifty thousand cubic feet or has sleeping accommodation for more than one hundred persons.

"Building of the warehouse class."

(28) The expression "building of the warehouse class" means a warehouse factory manufactory brewery or distillery and any other building exceeding in cubical extent one hundred and fifty thousand cubic feet which is neither a public building nor a domestic building.

"Owner."

(29) The expression "owner" (*q*) shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of any land or tenement otherwise than as a tenant from year to year or for any less term or as a tenant at will.

"Occupier."

(30) The expression "occupier" does not include a lodger and "occupy" and "occupation" do not refer to occupation by a lodger (*r*).

(*q*) **Owner.** "Adjoining" and "building owners" are included under the term "owner" where it is declared that expenses are to be borne by or recovered from the owner of any premises. Sec. 173, *post*.

The definition of "owner" in this sub-section is the same as that contained in the repealed Metropolitan Building Act, 1855, sec. 3. Under that Act the lessee, and not the freeholder, of a chapel, held on a twenty-one years' lease, was held to be the owner. *Mourilyan* v. *Labalmondiere*, 1 E. & E. 533; 30 L. J. M. C. 95; and see *Wigg* v. *Lefevre*, 8 T. L. R. 493. But the incumbent of a district church in the Metropolis, in whom the freehold was vested, was held not to be an owner, as he did not receive the rents and profits of the church, and was not in occupation of it. *Reg.* v. *Lee*, 4 Q. B. D. 75; 48 L. J. M. C. 22. The freeholder of land let for a long term on a building lease is not the owner of the houses erected thereon. The lessee is the owner, whether he has a legal or only an equitable title. *Evelyn* v. *Whichcord*, E. B. & E. 126; 27 L. J. M. C. 211; *Caudwell* v. *Hanson*, L. R. 7 Q. B. 55; 41 L. J. M. C. 8. The lessee for a long term of a house, the whole of which he had underlet at improved rents to different persons, who each took an interest in his own portion greater than that of tenant from year to year, was held to be an "adjoining owner" for the purposes of a dangerous structure notice respecting a party wall. *Hunt* v. *Harris*, 19 C. B. (N. S.) 13; 34 L. J. C. P. 249. A tenant in possession, having an equitable interest only, under an agreement for a lease for a term, was held to be an "adjoining owner," entitled to receive notice of works which would affect the party wall of his premises. *Cowen* v. *Phillips*, 33 Beav. 18; 8 L. T. (N. S.) 622. And so was a tenant of a part of a house under an agreement for a term of three years. *Fillingham* v. *Wood* (1891), 1 Ch. 51; 60 L. J. Ch. 232. A person in possession of land under a building agreement, where the grant of the lease is conditional on the erection of buildings, is, although no lease has been granted, an "owner" entitled to a party structure notice under sec. 90, *post*. *List* v. *Tharp* (1897), 1 Q. B. 260; 66 L. J. Ch. 175; 61 J. P. 248.

Under a similar definition of "owner" in the repealed Metrop. Bldg. Act, 1844, the lessor of a house let for a term, which had been burnt and was in a ruinous state was held to be an owner for the purpose of a "dangerous structure" notice, although by the lease the tenant was exempted from paying rent whilst the house was untenantable by reason of fire. *Ex parte the Overseers of Saffron Hill*, 24 L. J. M. C. 56; 18 Jur. 1104.

See also the definition of "owner" in the Met. Man. Act, 1855, sec. 250, *ante*, and see cases cited in note thereto.

(*r*) **Occupier . . . lodger.** These expressions are not defined by the Act. See note to sec. 94 (a) of the Pub. Hlth. (London) Act, 1891, *ante*.

(31) The expression "building owner" means such one of the owners of adjoining land as is desirous of building or such one of the owners of buildings storeys or rooms separated from one another by a party wall or party structure as does or is desirous of doing a work affecting that party wall or party structure. 57 & 58 Vict. ch. ccxiii. "Building owner."

(32) The expression "adjoining owner" (*s*), means the owner or one of the owners and "adjoining occupier" means the occupier or one of the occupiers of land buildings storeys or rooms adjoining those of the building owner. "Adjoining owner."

(33) The expression "builder" means the person who is employed to build or to execute work on a building or structure or where no person is so employed the owner of the building or structure. "Builder."

(34) The expression "superintending architect" means the superintending architect of metropolitan buildings for the time being (*t*). "Superintending architect."

(35) The expression "district surveyor" means every such surveyor who is appointed in pursuance of this Act or whose appointment is hereby confirmed and shall include any deputy or assistant surveyor appointed under this Act (*u*). "District surveyor."

(36) The expression "fire-resisting material" means any of the materials and things described in the second schedule to this Act. "Fire-resisting material."

(37) The expression "inhabited" applied to a room means a room in which some person passes the night or which is used as a living room including a room with respect to which there is a probable presumption (until the contrary is shown) that some person passes the night therein or that it is used as a living room. "Inhabited."

(38) The expression "habitable" applied to a room means a room constructed or adapted to be inhabited. "Habitable."

(39) The expression "the Metropolis Management Acts" means the Metropolis Management Act 1855 and the Acts amending the same or any one or more of those Acts (*x*). "Metropolis Management Acts."

(40) The expression "London" means the administrative county of London (*y*). "London."

(41) The expression "the council" means the London County Council. "The council"

(42) The expression "local authority" means the vestry or district board of works under the Metropolis Management Acts within whose parish or district the building structure place land or thing referred to is or will be or in the City the commissioners of sewers (*z*) or in the parish of Woolwich the Woolwich Local Board of Health (*a*). "Local authority."

(43) The expression "the City" means all parts now within the jurisdiction of the commissioners of sewers (*z*). "The City."

(44) The expression "corporation" means the mayor, aldermen, and commons of the City of London. "Corporation."

(45) The expression "Guildhall" means the land offices courts and buildings commonly called the Guildhall and the offices courts and "Guildhall."

(*s*) **Adjoining owner.** See sub-sec. 29, *supra*, and note thereto.
(*t*) **Superintending architect.** See sec. 136, *post*, as to his appointment.
(*u*) **District surveyor.** As to his appointment see secs. 139—143, *post*.
(*x*) **Metropolis Management Acts.** *Ante*.
(*y*) **Administrative county of London.** Defined by sec. 40 (1) of the Loc. Govt. Act, 1888, *ante*.
(*z*) **Commissioners of Sewers of the City.** See note to sec. 41 (4) (a) of the Loc. Govt. Act, 1888, *ante*.
(*a*) **Woolwich Loc. Bd.** See note to sec. 238 of the Metrop. Man. Act, 1855, *ante*.

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buildings adjoining or appurtenant thereto which now are used by or may hereafter be erected for the use of the corporation or of any committee commission or society appointed by them.

"Commissioners of sewers."

(46) The expression "commissioners of sewers" means the commissioners of sewers of the City of London (*b*).

"Tribunal of appeal."

(47) The expression "the tribunal of appeal" means the tribunal of appeal constituted by this Act (*c*).

PART II.—FORMATION AND WIDENING OF STREETS.

As to making streets.

6. From and after the commencement of this Act streets shall not be made and ways shall not be widened altered or adapted so as to form streets otherwise than subject to and in accordance with the provisions set forth in this part of this Act Provided that this Act shall not affect the powers of any local authority to widen alter or improve any street (*d*).

Sanction to formation of new streets.

7. Before any person (*e*) commences to form or lay out any street (*f*) whether intended to be used for carriage traffic or for foot traffic only such person shall make an application in writing to the council for their sanction to the formation or laying out of such street either for carriage traffic or for foot traffic (as the case may be):

Every such application shall be accompanied by plans and sections (*g*) with such particulars in relation thereto as may be required by printed regulations (*h*) issued by the council and the council shall forthwith communicate every such application to the local authority:

(*b*) **Commissioners of Sewers of the City.** See note (*z*) on page 391.

(*c*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*d*) **Powers of local authority.** See the Metropolitan Paving Act, 1817, sec. 80, *post*, the Metrop. Man. Act, 1855, secs. 120 and 144, *ante*, and the Metrop. Man. Amend. Act, 1862. secs. 72, 98, 99, and 100, *ante*.

(*e*) **Person** includes any body of persons, corporate or unincorporate. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 19.

(*f*) **Form or lay out a street.** For definition of "street" see sec. 5 (1), *ante*. Whether a place is a street within the meaning of this section is a question of law. *Wood* v. *London County Council*, 64 L. J. M. C. 276; 59 J. P. 615. The quadrangle of a block of buildings, entrance to which is gained by an archway through the middle of the ground floor of the buildings, and which is intended exclusively for the use of the tenants and the tradesmen and others visiting them, is not a "street" within the meaning of the section. *Ib.*

A passage or way between blocks of artizans' dwellings, access to which was gained through a gateway, and which was intended for the sole use of the tenants, the public having no right within the gateway, was held not to be a "street for foot traffic only" within the meaning of sec. 8 of the repealed Metrop. Man. and Bldg. Acts (Amend.) Act, 1882, and the consent of the County Council to the laying out of such passage or way was not, therefore, necessary. *Met. Bd. Wks.* v. *Nathan*, 54 L. T. (N. S.) 423; 50 J. P. 502; *London Coun. Counc.* v. *Davis*, 64 L. J. M. C. 212; 59 J. P. 583.

Where several plots of land abutting on a lane were sold for building purposes, two houses having been already built on two of them, and the purchaser removed the old wooden boundary fence of the lane and substituted a permanent wall and railing, it was held that he had begun to form and lay out a road for building as a "street" within the meaning of the Met. Man. Amend. Act, 1862, sec. 98. *Taylor* v. *Met. Bd. Wks.*, L. R. 2 Q. B. 213; 36 L. J. M. C. 53. But where the owner of land erected thereon some houses, the back gardens of which abutted on an ancient lane, and he removed the old fence separating the gardens from the lane, and substituted therefor an oak fence with gates, three feet within his own land, it was held that he had not commenced to form or lay out a road for building as a street within the meaning of the same section. *Met. Bd. Wks.* v. *Clever*, L. R. 3 C. P. 531; 37 L. J. M. C. 126.

(*g*) **Plans and sections.** These become the property of the Council.

(*h*) **Regulations and byelaws** as to the formation and widening of streets are in force. See sec. 164 (1) and note (*t*) thereto, *post*.

And no person shall commence to form or lay out any street for carriage traffic or for foot traffic without having obtained the sanction of the Council (*i*). 57 & 58 Vict. ch. ccxiii.

Evidence of commencement of street.

8. For the purposes of this part of this Act a person shall be deemed to commence to form or lay out a street if he erect a fence or other boundary or lay down lines of kerbing or level the surface of the ground so as to define the course or direction of a street or if he form the foundations of a house in such manner and in such position as that such house will or may become one of three or more houses abutting on or erected beside land on which a street is intended to be or may be thereafter laid out or formed Provided that no person shall be deemed to commence to form or lay out a street if he do any of the acts in this section mentioned for some purpose other than that of forming or laying out a street.

Grounds for refusal to sanction plans of streets.

9. In any of the cases following but in no other case (that is to say):—

(1) Where any street is proposed to be formed or laid out for carriage traffic (*k*) without being of or being widened to the full width of forty feet clear or such other width as may be required under the provisions of this Act (*l*);

(2) Where any street is proposed to be formed or laid out for foot traffic only (*k*) without being of or being widened to the full width of twenty feet clear;

(3) Where any street exceeding sixty feet in length or any street not exceeding sixty feet in length of which the length is greater than the width is proposed to be formed or laid out without being open at both ends from the ground upwards (*m*);

(4) Where any street not being within the City is proposed to be formed or laid out in such manner that such street will not at and from the time of forming and laying out the same afford direct communication between two streets such two streets being (where it is intended to form or lay out such street for carriage traffic) streets formed and laid out for carriage traffic;

(5) Where it is proposed to form or lay out any street not being within the City for foot traffic only and it appears to the council that such street should not be formed or laid out for foot traffic only or that such street should be formed or laid out for foot traffic only subject to conditions;

(6) Where the street is proposed to be formed or laid out for carriage traffic with any gradient steeper than one in twenty;

(*i*) **Sanction of Council.** This must be signified in writing, under the hand of the superintending architect. Sec. 195, *post.* As to penalties for infringing this section, see sec. 200 (1), *post.*

(*k*) **Form or lay out a street.** See note (*f*) on page 392.

(*l*) **Such other width as may be required.** See sec. 12, *post.*

(*m*) **Open at both ends, &c.** Under similar provisions of the byelaws of a local board it was held that an obligation was imposed on the landowner of providing an entrance of the specified width, before constructing a proposed new street, or commencing to build houses abutting on it. *Hendon Loc. Bd.* v. *Pounce*, 42 Ch. D. 602; 61 L. T. (N. S.) 465; *Bromley Loc. Bd.* v. *Lloyd*, 56 J. P. 278; 66 L. T. (N. S.) 462. Under the repealed sec. 98 of the Metrop. Man. Amend. Act, 1862, where piers were erected at one end of a road for hanging gates on, it was held that the road was not "open at both ends from the ground upwards." *Daw* v. *London Coun. Counc.*, 59 L. J. M. C. 112; 54 J. P. 502.

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(7) Where it is proposed to form or lay out any street in such manner as to be in contravention of any byelaw of the council (*n*);

it shall be lawful for the council by order (*o*) at any time within the period of two months after (*p*) the receipt of the application to refuse to sanction or to sanction subject to such conditions (*q*) as they may by such order prescribe the formation or laying out of such street for carriage traffic or for foot traffic only as the case may be provided that the council shall within such period give notice to the applicant of such order stating fully all their reasons for such refusal or the imposition of such conditions as the case may be:

Provided that if within the said period of two months the council fail to give notice of their refusal to sanction the formation or laying out of such street or of their disapproval of any such plan or section they shall be deemed to have given their sanction thereto.

Adaptation of ways for streets.

10.—(1) Before any person commences—

(a) To adapt for carriage traffic any street or way (*r*) not previously so adapted or to use or permit to be used for carriage traffic any street or way not previously so adapted;

(b) To adapt as a street for foot traffic only or as a public footway any way not previously so adapted;

such person shall make an application in writing to the council for their sanction thereto and such application shall be accompanied by plans and sections and such particulars in relation thereto as may be required by printed regulations (*n*) issued by the council and the council shall forthwith communicate every such application to the local authority and no person shall commence to execute any such work without having obtained the sanction of the council.

(2) Within two months after (*p*) the receipt of any such application the council shall either sanction the plans and sections or give notice to the applicant of their disapproval thereof stating fully all their reasons for such disapproval Provided that if within the said period of two months the council fail to give notice of their disapproval of any such plan or section they shall be deemed to have given their sanction thereto.

(3) A person shall be deemed for the purposes of this part of this Act to commence to execute a work within the meaning of this section if he erect a fence or other boundary or lay down lines of kerbing or level the surface of the ground so as to define the course or direction of a work within the meaning of this section or if he form the foundations of a house in such manner and in such position as that such house will or may become one of three or more houses abutting on or erected beside land on which a street is intended to be or may be thereafter laid out or formed Provided that no person shall be deemed to commence to execute a work within the meaning of this section if he do any of the acts in this

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(*n*) **Regulations and byelaws.** See note (*h*) on page 392.

(*o*) **By order.** This must be under seal duly authenticated. Sec. 187, *post*.

(*p*) **Within two months after,** i.e., calendar months (Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3), excluding the day of the receipt of the application, but including the day of the refusal to sanction it. *Radcliffe* v. *Bartholomew*, *ante*, p. 264. Where the period would expire on any day between August 8th and September 14th (both inclusive), it is extended for twenty-eight days. Sec. 174, *post*.

(*q*) **Sanction subject to conditions.** See sec. 190, *post*.

(*r*) **Street; way.** Defined by sec. 5, sub-secs. (1) and (2), *ante*.

sub-section mentioned for some purpose other than that of executing a work within the meaning of this section. 57 & 58 Vict. ch. ccxiii.

(4) Before any person commences to widen on either side to a less extent than the prescribed distance (*s*) any part of a street or way which (being adapted for carriage traffic) is less than forty feet in width or (being adapted for foot traffic only) is less than twenty feet in width he shall give notice in writing to the council accompanied by a plan showing the extent of the proposed widening and no person shall commence to execute any such widening until after the expiration of two months from the date of such notice unless with the previous sanction of the council.

Grounds for refusing to sanction adaptation of ways for streets.

11. (*t*) In any of the cases following but in no other case (that is to say):—

(1) Whenever it is proposed to adapt for carriage traffic any street or way (*u*) (not previously so adapted) where there are houses or buildings either on both sides thereof or only on one side thereof without a distance of at least twenty feet clear being left between the centre of the roadway (*u*) and the nearest external wall (*u*) of the houses or buildings on the side of the street or way to which the measurement is taken or (if there be forecourts or other spaces left between such external wall and the roadway) without there being a distance of at least twenty feet clear between the centre of the roadway and the external fences or boundaries of such forecourts or other spaces :

(2) Where it is proposed to adapt as a street for foot traffic only or as a public footway any way not previously so adapted without the same being of or being widened to the full width of twenty feet clear measured as aforesaid ;

(3) Where any such adaptation would result in the formation of a street not exceeding sixty feet in length or a street not exceeding sixty feet in length of which the length is greater than the width and in either case not being open at both ends from the ground upwards ;

(4) Where any such adaptation would result in the formation of a street not being within the City and not affording direct communication between two streets such two streets being (where it is intended to form or lay out such street for carriage traffic) streets formed and laid out for carriage traffic ;

(5) Where the adaptation will result in the formation or laying out of a street not being within the City for foot traffic only and it appears to the council either that such street should not be formed or laid out for foot traffic only or that such street should be formed or laid out for foot traffic only subject to conditions ;

(6) Where the adaptation would result in the formation of a street for carriage traffic with any gradient steeper than one in twenty ;

(7) Where the adaptation is proposed to be made in such a manner as to be in contravention of any byelaw of the council ;

it shall be lawful for the council by order at any time within the said period of two months after the receipt of the application to refuse to

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(*s*) **Prescribed distance** is defined by sec. 5 (5), *ante*.

(*t*) **Section 11.** Compare this section with sec. 9, *ante*, and see notes thereto.

(*u*) **Street; way; centre of the roadway; external wall.** Defined by sec. 5, sub-secs. (1), (2), (4), and (5), respectively, *ante*.

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sanction or to sanction (subject to such conditions as they may by such order prescribe) the adaptation proposed by the application Provided that the council shall within such period give notice to the applicant of such order stating fully all their reasons for such refusal or the imposition of such conditions as the case may be Provided also that if within the said period of two months the council fail to give notice of their refusal to sanction such adaptation or of their sanction of the adaptation subject to conditions they shall be deemed to have given their sanction thereto.

Greater width of street may be required in certain cases.

12. In any case where it is intended—

(a) To form or lay out any street not being within two miles of Saint Paul's Cathedral for carriage traffic:

(b) To adapt or permit to be used for carriage traffic any street or way (not being within two miles of Saint Paul's Cathedral) not previously so adapted;

and the council shall deem it expedient in the public interest that the street or way should by reason of its length or importance or in consequence of its forming or being so situate as to be likely to form part of an important line of communication or for other sufficient reason be of a greater width than forty feet clear they may make it a condition of their sanction that the street or way should be throughout or in such part as they may direct of a greater width than forty feet (*x*) but nothing in this section shall authorise the council to require a greater width than sixty feet:

And before requiring that any street or way shall be wider than forty feet the council shall give notice of their intention to the local authority in order that the local authority (*y*) if they think fit may make a representation to the council.

Position of new buildings with reference to streets.

13.—(1) No person shall erect any new building (*z*) or new structure or any part thereof or extend any building or structure or any part thereof in such manner that any external wall (*z*) of any such building or structure or (if there be a forecourt or other space between such external wall and the roadway) any part of the external fence or boundary of such forecourt or other space shall without the consent in writing of the council be in any direction at a distance less than the prescribed distance (*z*) from the centre of the roadway (*z*) of any street or way (*z*) (being a highway) (*a*).

(2) Where the council after consulting the local authority (*y*) shall deem it expedient in the public interest either by reason of the length or importance of the street or way or by reason of the street or way forming or being so situate as to be likely to form part of an important line of communication or for other sufficient reason that the prescribed distance from the centre of the roadway of any such street or way should where such roadway is used for the purpose of carriage traffic be greater than twenty feet it shall be lawful for the council to determine that the prescribed distance shall be such greater distance not exceeding thirty feet from the centre of the roadway of such street or way on either side or both sides as the council shall see fit to determine (*b*). This sub-section

(*x*) **Condition of their sanction.** See sec. 15, *post*.
(*y*) **Local authority** is defined by sec. 5 (42), *ante*.
(*z*) **New building; external wall; prescribed distance; centre of the roadway; street; way.** Defined by sec. 5, sub-secs. (6), (15), (5), (4), (1), and (2), respectively, *ante*.
(*a*) **Highway.** See note (*y*) to sec. 96 of the Met. Man. Act, 1855, *ante*.
(*b*) **Such greater distance as Council determine.** See sec. 15, *post*.

shall not apply to any street or way within two miles of Saint Paul's Cathedral. 57 & 58 Vict. ch. ccxiii.

(3) In case the person intending to erect form or extend any such building structure forecourt or space shall be dissatisfied with the determination of the council that the prescribed distance shall be greater than twenty feet from the centre of the roadway he may appeal to the tribunal of appeal (*c*) against such determination of the council.

(4) The council may in any case where they think it expedient consent to the erection formation or extension of any building structure forecourt or space at a distance less than the prescribed distance from the centre of the roadway of any such street or way and at such distance from the centre of such roadway and subject to such conditions and terms (if any) as they may think proper to sanction Provided that the giving of such consent by the council shall not in any way affect any rights of the owners of adjoining land Before giving such consent the council shall communicate to the local authority their intention to give the same Any person dissatisfied with the determination of the council under this sub-section may appeal to the tribunal of appeal (*c*).

(5) Provided that where any person intends to alter or re-erect a building or structure existing either at the commencement of this Act or at any time within seven years previously and which shall not be or shall not have been in conformity with the provisions of this section relating to new buildings and structures such person may cause to be prepared plans showing the extent of such building or structure (or in the event of such building or structure having ceased to exist before the commencement of this Act or having been accidentally destroyed the best plans available under all the circumstances of the case) and the extent of the forecourt or other open space (if any) between any external wall of such building or structure and the roadway and may cause such plans to be submitted to the district surveyor who shall (if reasonably satisfied with the evidence of their accuracy) certify the same under his hand and such certificate shall be taken to be conclusive evidence of the correctness of the plans Thereupon it shall be lawful for such person to alter or re-erect such building or structure but so that no land within the prescribed distance shall be occupied by the re-erected building or structure or the forecourt or such other open space as aforesaid (if any) except that which was occupied within the prescribed distance by the previously existing building structure forecourt or open space :

If such person should fail to submit such plans to the district surveyor or the district surveyor or the tribunal of appeal should refuse to certify the accuracy of the same such person shall in altering or rebuilding the said building or structure be bound by the preceding provisions of this section in all respects as though no building or structure had previously existed upon the land within the period aforesaid Provided always that no dwelling-house to be inhabited or adapted to be inhabited by persons of the working class shall without the consent of the council be erected or re-erected within the prescribed distance to a height exceeding the distance of the front or nearest external wall of such building from the opposite side of such street and that no building or structure shall be converted into

(*c*) **Tribunal of appeal.** See secs. 175—186, *post*.

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such dwelling-house within the prescribed distance so as to exceed such height (*d*):

Provided that this section shall not prevent the re-erection of any such dwelling-house erected previously to the passing of this Act by a local authority.

(6) Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes (*e*).

Notice to comply with preceding section.

14. In every case where any new building or new structure is erected at a distance in any direction from the centre of the roadway of any street or way less than the distance permitted under this part of this Act or contrary to the conditions and terms (if any) subject to which the council or the tribunal of appeal has sanctioned the erection of such building the council may serve a notice upon the owner or occupier (*f*) of the said building or structure or upon the builder requiring him to cause such building structure forecourt or space or any part thereof to be set back so that every part of any external wall of such building or structure or of the external fence or boundary of such forecourt or space shall be at a distance in every direction from the centre of the roadway of such street or way not less than the distance so permitted and shall be in accordance with such conditions and terms (if any) as the council or the tribunal of appeal may have prescribed.

As to compensation in certain cases.

15. In any case where—

(1) The council under this part of this Act make it a condition of their sanction to—

(a) the formation or laying out of any street for carriage traffic over land which either at the commencement of this Act or at any time within seven years previously has or shall have been occupied by buildings or by market garden; or

(b) the adaptation or use for carriage traffic of any street or way not previously so adapted or used;

that the street or way shall be throughout or in any part of a greater width than forty feet; or

(2) The council determine that the prescribed distance from the centre of the roadway shall be greater than tweny feet:

the council shall be liable to pay to the owner of land or buildings required for such greater width or such greater prescribed distance compensation for the loss or injury (if any) sustained by him by such requirement The amount of such compensation if not agreed within two months from the time of such condition being made or determination arrived at may (unless the council waive the condition or determination) be recovered in a summary manner (*g*) except where the amount of compensation claimed exceeds fifty pounds in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration (*h*) and for that purpose

(*d*) **Working-class dwellings.** See also sec. 42, *post*.
(*e*) **Special Act; railway purposes.** See notes to sec. 31, *post*.
(*f*) **Owner; occupier.** Defined by sec. 5 (29) and (30), *ante*.
(*g*) **Summary manner.** See sec. 166, *post*.
(*h*) **Arbitration.** The provisions as to arbitration are contained in the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), secs. 25—37. The Arbitration Act, 1889

those Acts so far as applicable shall be deemed to be incorporated with this Act: 57 & 58 Vict. ch. ccxiii.

Provided always that within two months from the time of such condition or determination being made or arrived at if the amount of such compensation has not been settled before the expiration of such time it shall be lawful for the council to waive such condition or determination Provided also that if the council waive such condition or determination they shall pay to the owner the reasonable costs charges and expenses incurred by him in consequence of such condition or determination and in connexion with the negotiations for the settlement of the amount of compensation:

For the purpose of this section the expression "owner" has the same meaning as in the Lands Clauses Acts (*i*)

16. Where after the commencement of this Act— As to erection of buildings at less than prescribed distance from centre of ways not being highways.

(i) any new building (*k*) or structure is erected or commenced in such manner that—

(a) any part of any external wall (*k*) of any such building or structure; or

if there be between such external wall and the roadway any forecourt or other space—

(b) any part of the external fence or boundary of such forecourt or space

is or will be in any direction distant from the centre of the roadway of any way (*k*) (not being a highway) (*l*) less than the prescribed distance (*k*) or less than such other distance as may have been sanctioned by the council or the tribunal of appeal; or

(ii) Any conditions or terms subject to which the sanction of the council or the tribunal of appeal in relation to any such building structure forecourt or space was obtained have not been complied with; or

(iii) The time during which such sanction was limited to continue has expired;

the way shall not become a highway except subject to the following provisions:—

(i) A written notice shall be served upon the council of the proposal to make the way a public highway;

(ii) The council may at any time within two months after (*m*) the receipt of such notice serve a notice upon the owner of such building structure forecourt or space or the builder requiring him to cause the same or any part thereof to be set back so that every part of any external wall of such building or structure or of the external fence or boundary of such forecourt or space shall be in every direction at a distance not less than the prescribed distance from the centre of

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(52 & 53 Vict. c. 49), sec. 24, enacts that "This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act."

(*i*) **Owner.** The Lands Clauses Consolidation Act, 1845, sec. 3, defines "owner" to "be understood to mean any person or corporation who, under the provisions of this or the special Act, would be entitled to sell and convey lands to the promoters of the undertaking."

(*k*) **New building; external wall; centre of the roadway; way; prescribed distance.** Defined by sec. 5, sub-secs. (6), (15), (4), (2), and (5), respectively, *ante*.

(*l*) **Highway.** See note (*y*) to sec. 96 of the Met. Man. Act, 1855, *ante*.

(*m*) **Within two months after.** See note to sec. 9, *ante*.

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the roadway of such way or at such distance and according to such conditions and terms (if any) as the council or the tribunal of appeal may have sanctioned and prescribed;

(iii) Unless and until such first-mentioned notice has been given to the council and such last-mentioned notice (if any) has been complied with the way shall not become a highway:

Provided that this section shall not affect the erection or extension of any building or structure within the limits of any area which may have been lawfully occupied by any building or structure at any time within two years before the twenty-second day of July one thousand eight hundred and seventy-eight or the erection or extension of any building or structure lawfully in course of erection or extension on the said twenty-second day of July.

Sanction to construction of new buildings at less than prescribed distance.

17. The council may sanction the erection of any new building or structure at any less distance than the prescribed distance from the centre of the roadway of any way (not being a highway) to be specified in such sanction or the continuance of any new building or new structure erected at such less distance or the continuance thereof for a limited time only to be specified in such sanction in such cases and subject to such terms and conditions (if any) as they may think proper And any such sanction may be framed in such manner as to apply to all new buildings in any such way or any part thereof Provided that the giving of such sanction by the council shall not in any manner affect any rights of the owners of adjoining land.

Regulations to be printed and supplied.

18. Copies of the printed regulations (*n*) of the council issued for the purposes of this part of this Act shall be kept at the county hall (*o*) and supplied all reasonable times without charge to any applicants for the same.

Appeal.

19. Whenever any applicant under part ii. of this Act for the sanction of the council to the formation or laying out of a street or the adaptation of a street or way for carriage or foot traffic or for the certificate of a district surveyor is dissatisfied with the refusal or conditional grant of such sanction or with any condition imposed by the council or with the refusal of such certificate as aforesaid he may appeal to the tribunal of appeal (*p*).

As to private roads laid out by a railway company.

20. Nothing in this part of this Act shall extend or apply to any private road formed or laid out by a railway company and used as an approach to a station or station yard or as an approach to land used for railway purposes.

Exempting certain school board buildings.

21. Notwithstanding anything in this Act any buildings to be erected upon any lands now belonging to the school board for London or over which they have powers of compulsory purchase or may acquire such powers in the present session of Parliament may be erected in accordance with the provisions of any Act in force immediately before the passing of this Act (*q*).

(*n*) **Printed regulations.** See secs. 7 and 10 (1), *ante*.

(*o*) **County hall.** This expression is not defined by this Act. Presumably the central offices and meeting hall of the County Council answer the description.

(*p*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*q*) **School Board for London.** Where the London School Board acquired land under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), secs. 19 and 20, and built a school with a fence thereon within the prescribed distance of the centre of the road, it was held that they could use the land for the statutory purposes for which they had acquired it, free from the restrictions as to distance from the centre of the roadway imposed by the Met. Man. and Bldg. Acts Amend. Act, 1878, secs. 4 and 6. *London Coun. Counc.* v. *London School Bd.*, *ante*, p. 72.

PART III.—LINES OF BUILDING FRONTAGE (*r*).

57 & 58 Vict. ch. ccxiii.

Mode of proceeding with regard to buildings beyond line of street.

22.—(1) No building or structure (*s*) shall without the consent in writing of the council be erected beyond the general line of buildings (*t*) in any street or part of a street (*u*) place or row of houses in which the same is situate (*x*) in case the distance (*y*) of such line of buildings from the highway (*z*) does not exceed fifty feet or within fifty feet of the highway when the distance of the line of buildings therefrom amounts to or exceeds fifty feet notwithstanding there being gardens or vacant spaces between the line of buildings and the highway Such general line of buildings shall if required be defined by the superintending architect (*a*) by a certificate (*b*) such certificate to be issued within one month from (*c*) the date of the application therefor.

(*r*) **Lines of building frontage.** Part iii. does not apply to the City (sec. 30, *post*), and does not affect the exercise of any powers conferred on railway companies by special Act of Parliament for railway purposes. Sec. 31, *post*. As to how far the provisions of this part may be overridden by the provisions of other Acts, see *London County Council* v. *London School Board*, *supra*, and note to sec. 247 of the Metrop. Man. Act. 1855. *ante*.

(*s*) **Building or structure.** For definition of "new building," see sec. 5 (6), *ante*, and see cases cited in note thereto. A wall seven feet high, erected in advance of and at right angles to the general building line, was held to come within the meaning of "a building, structure or erection" in the corresponding provision of the Met. Man. Amend. Act, 1862, sec. 75. *Ellis* v. *Plumstead Dist. Bd.*, 57 J. P. 359; 68 L. T. (N. S.) 291. Where the forecourt of a house was bounded by a wall two or three feet high, surrounded by railings, and the owner took down the railings and raised the wall to eleven feet high for the purpose of posting advertisements thereon, the raised wall was held to be a "building, structure or erection" within the meaning of the same section. *Lavy* v. *London County Council* (1895), 2 Q. B. 577; 64 L. J. M. C. 262. See also *Wendon* v. *London County Council*, *infra*. Whether an erection is a building or structure is a question of fact for the magistrate. *Lavy* v. *Lon. Coun. Counc.*, *supra*; *Ellis* v. *Plumstead Dist. Bd.*, *supra*. Where a photographer erected in front of the building line a wooden show case, and was convicted under the Pub. Hlth. (Buildings in Streets) Act, 1888 (51 & 52 Vict. c. 52), sec. 3, of erecting a "building" beyond the main front line, it was held that the decision of the justices could not be interfered with. *Brown* v. *Leicester* (*Mayor, &c., of*), 57 J. P. 70; 67 L. T. (N. S.) 686.

(*t*) **Beyond general line of buildings.** As to projections from shop fronts, and the erection of bay windows, oriel windows, and turrets beyond the general building line, see sec. 73, *post*. As to the demolition of buildings built beyond the general building line, see sec. 170, *post*; and for penalties for contravening this section, see sec. 200 (3), *post*.

(*u*) **Street** is defined by sec. 5 (1), *ante*. The corresponding provision of the repealed Met. Man. Amend. Act, 1862, sec. 75, was held to apply to a street newly laid out, and partly built along, with no gate at either end, and watered and sewered by the vestry, but not dedicated to the public. *Poplar Dist. Bd.* v. *North Metropolitan Tramway Co.*, 43 J. P. 590.

(*x*) **Is situate.** As to the power of the superintending architect to determine in what street or streets a building or structure is situate, see sec. 29, *post*. It may be situate in more streets than one for the purpose of this section. *Gilbart* v. *Wandsworth Dist. Bd.*, 53 J. P. 229; 60 L. T. (N. S.) 149. See also *Warren* v. *Mustard*, 61 L. J. M. C. 18; 56 J. P. 402; *London Coun. Counc.* v. *Lawrence* (1893), 2 Q. B. 228; 62 L. J. M. C. 176; and *Allen* v. *London Coun. Counc.*, *post*, p. 404.

(*y*) **Distance.** To be measured in a straight line on a horizontal plane. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 34.

(*z*) **Highway.** Under the corresponding provision of the repealed sec. 75 of the Metrop. Man. Amend. Act, 1862, the expression "highway" was held not to mean highway in the legal sense of the term, but to mean that part of the street used for traffic, and not built upon. *Poplar Dist. Bd.* v. *North Metropolitan Tramways Co.*, *supra*.

(*a*) **Superintending architect** is defined by sec. 5 (34), *ante*.

(*b*) **Certificate.** Under repealed sec. 75 of the Met. Man. Amend. Act, 1862, it was held that the issuing of the certificate of the superintending architect was not a condition precedent to proceedings for building beyond the general building line, and that it was sufficient if he gave his decision before the determination of the case by

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(2) This section shall not apply to any building or structure erected after the commencement of this Act upon land which either at the commencement of this Act or at any time within seven years previously has or shall have been lawfully occupied by a building or structure (*d*).

Buildings projecting beyond general line when taken down to be set back.

23.—(1) In case any building or structure which shall in any part thereof project beyond the general line of buildings in a street or beyond the front of the building wall or railing on either side thereof shall at any time be taken down (*e*) to an extent exceeding one-half of the cubical extent (*f*) of such building or structure or shall be destroyed by fire or other casualty or demolished pulled down or removed from any other cause to the extent aforesaid it shall be lawful for the council to require the same building or structure or any new building or structure proposed to be erected on the site or any part of the site thereof to be set back to such a line and in such a manner as the council shall direct.

(2) The council shall make compensation to the owner of such building for any damage and expenses which he may sustain and incur thereby and the amount of such compensation if not agreed between the council and the parties concerned shall be recovered in a summary manner (*g*) except where the amount of compensation claimed exceeds fifty pounds

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the magistrate. *Lavy* v. *London County Council*, *supra*. The certificate is subject to appeal to the tribunal of appeal under sec. 25, *post*. If it is not appealed from under that section, it is final and conclusive. If it is, then the decision of the tribunal of appeal is final. In either case neither the certificate nor the decision of the tribunal of appeal can be interfered with by the magistrate or the High Court, unless the certificate has been obtained by improper means. *Spackman* v. *Plumstead Dist. Bd.*, 10 App. Cas. 229 ; 54 L. J. M. C. 81 ; *Worley* v. *St. Mary Abbott's, Kensington* (1892), 2 Ch. 404 ; 61 L. J. Ch. 601.

(*c*) **Within one month from.** See note to sec. 32, *post*.

(*d*) **Occupied by a building or structure.** A building owner laid in the footings of the walls of a corner house, and raised one of the external walls to the height of twelve feet, before any building line had been ascertained. He then built a row of houses in the same street, which he set ten feet further back. Without the consent of the County Council the erection of the corner house was subsequently proceeded with, and two months afterwards the superintending architect determined the general line of building to be the main fronts of the above-mentioned row of houses. *Held*, that the site of the corner house was not in fact occupied by a "building, structure, or erection" within the meaning of the repealed sec. 75 of the Met. Man. Amend. Act, 1862, and that the land was therefore vacant land for the purpose of its provisions with respect to the general line of buildings. *Wendon* v. *London County Council* (1894), 1 Q. B. 812 ; 63 L. J. M. C. 55.

Under the same Act it was held that the yard of a house was included in the site of the house, and might be built upon when rebuilding. *Lord Auckland* v. *Westminster Dist. Bd.*, L. R. 7 Ch. App. 597 ; 41 L. J. Ch. 723. But this case was distinguished in *London Coun. Counc.* v. *Pryor* (1896), 1 Q. B. 465 ; 65 L. J. M. C. 89, where it was held that the forecourt and garden did not form part of the site of a building, and that the owner's right to rebuild was confined to rebuilding on the same site as the old building stood.

There may be an abandonment of the right to rebuild. See *Lord Auckland* v. *Westminster Dist. Bd.*, *supra* ; *Worley* v. *St. Mary Abbott's, Kensington*, *supra* ; *London Coun. Counc.* v. *Pryor*, *supra*.

(*e*) **Taken down.** The owner of a house in a street took out the front wall of the ground and first floors, and removed the first floor, with the view of turning the two lowest storeys into one lofty shop. The second floor was not disturbed, but was shored up with timber, which was afterwards replaced by iron girders and brick piers. *Held*, that inasmuch as a substantial part of the house and of its front wall was left standing, neither the house nor the front thereof had been "taken down" within the meaning of sec. 155 of the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), and that the power to fix a building line had not arisen. *Att.-Genl.* v. *Hatch* (1893), 3 Ch. 36 ; 62 L. J. Ch. 857.

(*f*) **Cubical extent** is defined by sec. 5 (24), *ante*.

(*g*) **Summary manner.** See sec. 166, *post*.

in which case the amount thereof shall be settled by arbitration according to the provisions contained in the Lands Clauses Acts which are applicable where questions of disputed compensation are authorised or required to be settled by arbitration (*h*) and for that purpose those Acts so far as applicable shall be deemed to be incorporated with this Act For the purpose of this section the expression "owner" has the same meaning as in the Lands Clauses Acts (*h*). 57 & 58 Vict. ch. ccxiii.

Notices of definition of general line.

24. The superintending architect shall within fourteen days after (*i*) the issue of the certificate defining the general line of buildings in any street or part of a street place or row of houses cause a notice of his certificate to be served on the local authority (*k*) and on the owner (*k*) of the building or land to which the certificate relates and on the owner of the houses in the same block or row within a distance not exceeding fifty yards on either side of the building or land to which the certificate relates or where there is no such block or row upon the owner of the adjoining land on either side of the building or land to which the certificate relates Certificates made by the superintending architect under this part of this Act shall be preserved by the council and be open to inspection at all reasonable times by all persons desiring to inspect the same.

Appeal against certificate of architect as to general line.

25. The local authority or any person deeming himself aggrieved by the certificate of the superintending architect may appeal to the tribunal of appeal (*l*).

Conditions may be attached to consent to building in front of general line.

26. In giving their consent for the erection of any building or structure beyond the general line of buildings in any street or part of a street place or row of houses the council may attach any conditions to such consent and such conditions may include any or all of the conditions following viz. (*m*) :—

(1) That land in front of the building or structure to such an extent as the council may think proper shall be dedicated to and left open for the use of the public (*n*) :

(2) That the building or structure shall be used only for such purposes as may be specified in the consent or shall not be used for any particular purposes specified in the consent unless with the further consent of the council obtained when a change of purpose is desired :

And generally any other condition which the council may deem it expedient to impose in the public interest.

(*h*) **Arbitration; owner.** See notes to sec. 15, *ante*.

(*i*) **Within fourteen days after,** i.e., fourteen days exclusive of the day of issuing the certificate, but inclusive of the day of serving the notice. *Robinson* v. *Waddington*, *ante*, p. 203.

(*k*) **Local authority; owner.** Defined by sec. 5, sub-secs. (42) and (29), *ante*.

(*l*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*m*) **Conditions to consent.** See also sec. 190, *post*.

(*n*) **Dedicated to use of public.** Under the Met. Man. and Bldg. Act (Amend.) Act, 1882 (45 Vict. c. 14), sec. 9, the County Council consented to the erection of a shop beyond the general building line, subject to the condition that the whole of the land in front of the shop be dedicated to the public. The land in question was thrown into the pathway, but the owners dug out a piece of the land in order to form a rolling way into their cellar, under the shop, and covered it with a cellar flap, which, when open, obstructed the passage of the public. It was held that the piece of land did not vest in the County Council, and that the owners of the shop had complied with the condition of the Council so far as the same was validly imposed on them. *London Coun. Counc.* v. *Best*, 9 T. L. R. 499.

57 & 58 Vict. ch. ccxiii.

Consent not to affect rest of general line.

27. The consent by the council to the erection of any building or structure beyond the general line of buildings in any part of a street or the erection of such building or structure shall not be deemed to affect or alter in that or any other part of the street the general line of buildings as existing at the time of such consent.

Register of conditional consents to be kept and open for inspection.

28. The council shall keep a register of all conditional consents given by them under this part of this Act and shall keep the same open for inspection by all persons interested at all reasonable times.

Defining in what street a building or structure is situate.

29. The superintending architect (*o*) shall if required by the council the local authority or any person interested for the purposes of this part of this Act determine in any case in what street or streets a building or structure is situate (*p*) such determination to be evidenced by his certificate. Any person aggrieved by such certificate may appeal to the tribunal of appeal (*q*).

Part of Act not to apply in City.

30. This part of this Act shall not apply within the City (*r*).

Certain powers of railway companies not affected by this part of Act.

31. Nothing in this part of this Act shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament (*s*) for railway purposes (*t*).

PART IV.—NAMING AND NUMBERING OF STREETS.

Notice of new name of street.

32. Before any name is given to any street (*u*) notice (*x*) of the intended name shall be given to the council and the council may by notice in writing given to the person by whom notice of such intended name has been given to them at any time within one month after (*y*) receipt of such notice object to such intended name and it shall not be lawful to set up any name to any street in London until the expiration of one month after notice thereof has been given as aforesaid to the council or to set up any name objected to as aforesaid.

(*o*) **Superintending architect** is defined by sec. 5 (34), *ante*.

(*p*) **Is situate.** A building or structure may be situate in more streets than one. *Gilbart* v. *Wandsworth Dist. Bd.*, *ante*, p. 401. On an application to a magistrate for a demolition order under sec. 170, *post*, the question whether a building is situate in a particular street is to be decided by the superintending architect's certificate, and not by the magistrate. *Allen* v. *London Coun. Counc.* (1895), 2 Q. B. 587; 64 L. J. M. C. 267.

(*q*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*r*) **The City** is defined by sec. 5 (43), *ante*. The Commissioners of Sewers are the authority with respect to building lines in the City. City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii.), sec. 153.

(*s*) **Special Act.** See note to sec. 126 of the Loc. Govt. Act, 1888, *ante*, as to the interpretation of conflicting provisions in general and special Acts; and *London and Blackwall Ry. Co.* v. *Limehouse Dist. Bd.*, and *City and South London Ry. Co.* v. *London Coun. Counc.*, there cited, as to the power of railway companies to build stations beyond the general building line.

(*t*) **Railway purposes.** Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 157, cottages built by a railway company for their servants were held not to be buildings "used for the purposes" of a railway, so as to exempt them from the operation of a byelaw of a local authority which required notice of the proposed erection of all new buildings. *Manchester, Sheffield, and Lincolnshire Rly. Co.* v. *Barnsley Union (Guardians of)*, 56 J. P. 149; 17 L. T. (N. S.) 119. See also *Coole* v. *Lovegrove*, *post*, p. 476.

(*u*) **Street** is defined by sec. 5(1), *ante*.

(*x*) **Notice.** This must be in writing. Sec. 187, *post*.

(*y*) **Within one month after,** i.e., calendar month (Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3), exclusive of the day of receiving the notice, but inclusive of the day of objecting. *Radcliffe* v. *Bartholomew*, *ante*, p. 203.

57 & 58 Vict. ch. ccxiii.

Affixing names of streets by local authority.

33. The local authority (*z*) shall and may cause the name of every street to be painted or affixed on a conspicuous part of some house or building at or near each end or entrance to such street or some other convenient part of the street and shall renew such name whenever it may be obliterated or defaced.

Altering names of streets.

34. The council may by order (*a*) alter the name of any street to any other name which to the council may seem fit.

Notice of altering names of streets.

35. One month before (*b*) making an order altering the name of a street the council shall notify their intention of making such alteration to the local authority (*z*) and shall also cause notice of their intention to be posted at each end of the street or in some conspicuous position in the street or at the option of the council to be notified by circular delivered at every house in the street.

Every such notice shall state that the order altering the name of the street may be issued on or after a day to be therein named if no objection in writing to the proposed alteration be given to the council.

Numbering houses.

36.—(1) The council may order (*a*) that any houses or buildings in any street or way (*c*) or any part thereof shall for the purpose of distinguishing the same be marked with such numbers as they shall deem convenient for that purpose and which they shall specify in their order in that behalf.

(2) Whenever the council have made any such order they shall transmit a copy thereof to the local authority (*z*) and it shall be the duty of the local authority to perform all necessary acts and to take all requisite proceedings for carrying the order of the council into execution.

(3) The local authority shall give notice to the owners or occupiers (*d*) of the houses and buildings in such street or way to mark their several houses and buildings with such numbers as the council shall have ordered and to renew the numbers of such houses or buildings as often as they are obliterated or defaced.

(4) If any occupier of any such house or building neglect for one week after notice from the local authority to mark such house or building with such number as shall be mentioned and required in such notice the local authority may and shall cause such number to be so marked or renewed and recover the expenses thereof from the owner or occupier (*d*) of such house or building in a summary manner.

Power to council to name and number streets in default of local authority complying with order.

37. Whenever the council have transmitted a copy of any order made by them in pursuance of the provisions of this part of this Act to any local authority and such local authority have for the space of three months after the receipt of such order failed to perform all or any of the necessary acts or to take all or any of the requisite proceedings for carrying such order into execution then and in every such case the council may perform all or any of such necessary acts or take all or any of such necessary proceedings which the local authority have failed to perform or take and the council may exercise all the rights powers authorities and jurisdiction

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(*z*) **Local authority** is defined by sec. 5 (42), *ante*.

(*a*) **Order.** This must be under seal. Sec. 187 (2), *post*.

(*b*) **One month before.** Under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sec. 40 (b), "four months before" was held to mean "four months next before." *In re Smith, Ex parte Fox*, 17 Q. B. D. 4; 55 L. J. Q. B. 288.

(*c*) **Street; way.** Defined by sec. 5, sub-secs. (1) and (2), *ante*.

(*d*) **Owner; occupier.** Defined by sec. 5 (29) and (30), *ante*. As to the recovery of expenses by the occupier from the owner, see sec. 173, *post*.

57 & 58 Vict. ch. cxiii.

of a local authority with respect thereto including the recovery of expenses from owners of houses and buildings (*e*).

Register to be kept of alterations in names of streets.

38. The council shall keep a register of all alterations made by them in the names of streets and in the numbers of the houses therein and such register shall be kept in such form as to show the date of every such alteration and the name of the street previous to such alteration as well as the new name thereof. It shall be lawful for any person to inspect such register and to take a copy of any portion thereof upon payment of such reasonable fee as the council may from time to time determine.

PART V. (*f*)—OPEN SPACES ABOUT BUILDINGS AND HEIGHT OF BUILDINGS.

Meaning of "domestic building" in this part of Act.

39. For the purposes of this part of this Act the expression "domestic building" (*g*) shall not include any buildings used or constructed or adapted to be used wholly or principally as offices or counting-houses.

Light and ventilation of habitable basements.

40. In the case of domestic buildings erected after the commencement of this Act which shall have a habitable basement (*h*) there shall for the purpose of giving light and air to such basement be provided in the rear of the building and exclusively belonging thereto an open space of an aggregate extent of not less than one hundred square feet free from any erection thereon above the level of the adjoining pavement which open space notwithstanding anything hereinafter contained need not necessarily adjoin the rear boundary of the premises.

Space at rear of domestic buildings.

41.—(1) With respect to domestic buildings erected after the commencement of this Act and abutting upon (*i*) a street formed or laid out (*k*) after the commencement of this Act the following provisions shall have effect:—

(i) There shall be provided in the rear of every such building (*l*) an open space exclusively belonging to such building and of an aggregate extent of not less than one hundred and fifty square feet;

Where there is a basement storey (*m*) directly and sufficiently lighted and ventilated by the open space provided under the preceding section irrespective of any use to which the ground storey is appropriated or where there is no such basement storey but where the ground storey (*m*) is not constructed or adapted to be inhabited the open space required by this section may be provided above the level of the ceiling of the

(*e*) **Recovery of expenses from owners.** "Owner" is defined by sec. 5 (29), *ante*. The County Council may recover such expenses from the occupier, if it thinks fit, leaving him to recover them from the owner. Sec. 173, *post*.

(*f*) **Part V.** For exemptions from this part, see secs. 202—206, *post*.

(*g*) **Domestic building.** See the definition of this expression in sec. 5 (26), *ante*.

(*h*) **Habitable basement.** See sec. 5, sub-secs. (38) and (12), *ante*, for the meaning of this expression. For provisions as to the height of "habitable rooms," and the construction of the floors of "basement rooms," see sec. 70 (1) (a) and (d), *post*. See also the requirements with respect to "underground rooms" contained in the Pub. Hlth. (Lon.) Act, 1891, secs. 96—98, *ante*.

(*i*) **Abutting upon.** As to the meaning of "abutting upon," see note to sec. 77 of the Met. Man. Amend. Act, 1862, *ante*.

(*k*) **Street formed or laid out.** "Street" is defined by sec. 5 (1), *ante*. As to when a person is deemed to commence to form or lay out a street, see sec. 8, *ante*.

(*l*) **Rear of building.** See sec. 46, *post*.

(*m*) **Basement storey; ground storey.** These expressions are defined by sec. 5, sub-secs. (12) and (11), *ante*.

ground storey or a level of sixteen feet exclusive of lantern-lights measured from the level of the adjoining pavement; 57 & 58 Vict. ch. ccxiii.

In all other cases the open space shall be free from any erection thereon above the level of the adjoining pavement except a water-closet earthcloset or privy and a receptacle for ashes and enclosing walls none of which erections shall exceed nine feet in height;

(ii) Such open space shall extend throughout the entire width of such building and to a depth in every part of at least ten feet from such building:

(iii) The height (*n*) of any such building in relation to the space required in the rear thereof shall be fixed and ascertained as follows:—

(a) An imaginary line (hereafter referred to as "the horizontal line") shall be drawn at right angles to the roadway (*n*) formed or to be formed in front of the building and through or directly over a point in front of the centre of the face of the building;

(b) The horizontal line shall be produced to intersect the boundary of the open space furthest from the said roadway;

(c) The horizontal line shall be drawn throughout at the level of the pavement formed or to be formed in front of the centre of the building unless the site of the building incline towards the roadway or site of the roadway in which case the horizontal line shall be drawn directly over the said point in front of the centre of the face of the building at the level throughout of the ground (*n*) at the boundary of the space furthest from such roadway where such boundary is intersected by the horizontal line;

(d) A second imaginary line (in this part of this Act called "the diagonal line") shall be drawn in the direction of the building above and in the same vertical plane with the horizontal line and inclined thereto at an angle of sixty-three and a half degrees and meeting the horizontal line where it intersects the space furthest removed from such roadway;

(e) No part of such building shall extend above the diagonal line except chimneys dormers gables turrets or other architectural ornaments aggregating in all to not more than one-third of the width of the rear elevation of such building and except any building which under the provisions of this section is permitted on the open space;

(f) When the pavement in front of a building is not all on one level then for the purpose of compliance with this section the mean level of such pavement shall be deemed to be the level thereof. And where the boundary of the space at the rear of such building is not parallel with the rear wall of the building then for the purpose of this section the horizontal line shall be drawn to a point distant from such rear wall the mean distance from such wall of the boundary of the space at the rear of such building whether such point be beyond the said boundary or not;

(g) When the boundary of the space at the rear of any such building shall be so irregular in shape that a doubt arises as to how the measurement shall be taken application shall be made to the

(*n*) **Height; roadway; level of the ground.** These expressions are defined by sec. 5, sub-secs. (21), (3), and (8) respectively, *ante*.

council and the applicant if dissatisfied with the determination of the council may appeal to the tribunal of appeal (*o*);

(h) When the land at the rear of any such building and exclusively belonging thereto abuts immediately upon a street or upon an open space which is dedicated to the public or the maintenance of which as an open space is secured permanently or to the satisfaction of the council by covenant or otherwise the horizontal line shall be produced and the diagonal line may be drawn from the horizontal line at the centre of the roadway of such street at the level of the surface thereof or at the further boundary of such open space and it shall not be necessary to provide any open space at the rear of such building:

(iv) The council may—

(a) In the case of a building at a corner abutting upon (*p*) two streets;

(b) In the case of a building at a corner abutting on one side upon a street and on another side upon an open space not less than forty feet wide at any part the maintenance of which as an open space is secured permanently or to the satisfaction of the council by covenant or otherwise;

permit the erection of buildings not exceeding thirty feet in height upon such part of the space in the rear as they may think fit provided that the council be satisfied that such buildings shall be so placed as not to interfere unduly with the access of light and air to neighbouring buildings;

When the council refuse any application under this sub-section for permission to erect a building not exceeding thirty feet in height upon the space at the rear the applicant if dissatisfied with the determination of the council may appeal to the tribunal of appeal (*o*):

(v) In the case of buildings at a corner as hereinbefore described nothing in this part as to the determination of height by the diagonal line shall prevent the return front of such buildings being carried up to the full height of the front elevation for a distance of forty feet or for such less distance as the requirements for open space at the rear may demand:

(vi) In exceptional cases where owing to the irregular shape of the land any of the preceding provisions of this section cannot be applied the council may allow such modifications as they may think fit provided the council be satisfied that such modifications shall not interfere with the due access of light or air and all persons interested dissatisfied with any determination of the council under this sub-section may appeal to the tribunal of appeal (*o*).

(2) With respect to domestic buildings erected after the commencement of this Act abutting upon (*p*) a street formed or laid out (*q*) before the commencement of this Act the provisions of this section shall apply with this modification that the horizontal line shall be drawn throughout at a level of sixteen feet above the level of the adjoining pavement and that in any such case (except in the case of dwelling-houses to be inhabited or adapted to be inhabited by persons of the working class) the open space to

(*o*) **Tribunal of appeal.** See secs. 175—186, *post*.
(*p*) **Abutting upon.** See note (*x*) on page 409.
(*q*) **Street formed or laid out.** See note (*k*) on page 406.

be provided in accordance with paragraphs (i) and (ii) of sub-section 1 of this section may be provided above the level of the ceiling of the ground storey or above a level of sixteen feet (exclusive of lantern lights) above the level of the adjoining pavement. 57 & 58 Vict. ch. ccxiii.

Provided always that notwithstanding the preceding provisions of this part of this Act any part of any domestic building may extend above the diagonal line provided that the council or tribunal of appeal shall be satisfied that an open cubic space of air will be provided at the rear of such building (*r*) equivalent to the open cubic space which would have been provided at the rear of such building if such diagonal line had been drawn from the ground level in manner provided in sub-section 1 (iii) of this section and if no part of such building (except as permitted under the preceding provisions of this section) had extended above such diagonal line The applicant if dissatisfied with the determination of the council may appeal to the tribunal of appeal (*s*).

Nothing in this section shall apply to houses abutting in the rear on the River Thames or on a public park or on an open space of not less than eighty feet in depth which is dedicated to the public or the maintenance of which as an open space is secured permanently or to the satisfaction of the council by covenant or otherwise.

Open space to be provided about certain buildings not on the public way.

42. The following provisions shall have effect with respect to dwelling-houses (*t*) to be inhabited (*t*) or adapted to be inhabited by persons of the working class erected after the commencement of this Act (*u*) not abutting upon a street (*x*) :—

(i) At least one month before commencing to erect any such dwelling-house the person intending to erect the same shall deliver at the county hall (*y*) a sufficient plan or plans exhibiting the extent and height of the intended dwelling-house in its several parts and also its position in relation to every other building either already existing or in course of erection which is adjacent thereto :

(ii) In any case where the council are satisfied taking all the circumstances of the case into consideration that there will not be provided about such dwelling-house a sufficient open space or spaces for the admission of light and air thereto it shall be lawful for the council at any time before the expiration of one month from the delivery of the said plan or plans by order (*z*) to refuse to sanction such plan or plans or to sanction the same subject to such conditions as they may by such order prescribe (*a*) Provided always that nothing in this sub-section shall authorise the council to refuse to sanction such plan or plans or to prescribe any conditions when sanctioning the same in any case where the open space

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(*r*) **Rear of building.** See sec. 46, *post.*

(*s*) **Tribunal of appeal.** See secs. 175—186, *post.*

(*t*) **Dwelling-house; inhabited; street.** Defined by sec. 5, sub-secs. (25), (37), and (1), respectively, *ante.*

(*u*) **Erected after commencement of Act.** As to the re-erection of working class dwellings erected by a local authority previously to the passing of the Act, see sec. 51, *post.*

(*x*) **Abutting upon a street.** "Street" is defined by sec. 5 (1), *ante.* As to the meaning of "abutting upon," see note to sec. 77 of the Met. Man. Amend. Act, 1862, *ante.*

(*y*) **County hall** is not defined by this Act. Presumably the central office or meeting place of the County Council will answer the description.

(*z*) **By order.** This must be under seal. Sec. 187 (2), *post.*

(*a*) **Subject to conditions.** See also sec. 190, *post.*

57 & 58 Vict. ch. ccxiii.

or spaces for the admission of light and air proposed to be provided about such dwelling-house is or are equivalent to the open space or spaces which would have been provided about such dwelling-house under the provisions of this Act in case the same had been erected after the commencement of this Act abutting upon a street or way formed or laid out before the commencement of this Act :

(iii) No person shall commence to erect any such dwelling-house without having obtained the sanction of the council to the plans delivered by him :

(iv) Unless the council shall within one month (*b*) after the delivery of the said plan or plans to them give notice to the person delivering the same of their disapproval thereof the council shall be deemed to have given their sanction thereto :

(v) In case any person intending to erect any such dwelling-house considers that the refusal of the council to sanction the plans delivered by him or any of the conditions prescribed by the council is or are unreasonable he may appeal to the tribunal of appeal (*c*).

Saving for certain domestic buildings on old sites.

43. When any person intends to erect a domestic building (*d*) not being a dwelling-house to be inhabited or adapted to be inhabited by persons of the working class) abutting upon a street (*e*) on the site of domestic buildings existing at the commencement of this Act or on a site vacant at the commencement of this Act but which has been occupied by a domestic building at any time within seven years previous to the commencement of this Act the following provisions shall have effect :—

(i) It shall be lawful for such person before commencing to erect the intended domestic building to cause to be prepared plans showing the extent of the previously existing domestic building in its several parts (or in the event of such building having been taken down before the commencement of this Act or having been accidentally destroyed the best plans available under all the circumstances of the case) and to cause such plans to be submitted to the district surveyor who shall (if reasonably satisfied with the evidence of their accuracy) certify the same under his hand and such certificate shall be taken to be conclusive evidence of the correctness of the plans ;

Such person may then erect the intended domestic building but so that no more land shall be occupied by the newly-erected building than was occupied by the previously existing domestic building as so certified If such person fail to submit such plans to the district surveyor or the district surveyor or the tribunal of appeal refuse to certify the accuracy of the same such person shall in rebuilding be bound by the preceding provisions of this part of this Act relating to domestic buildings erected after the commencement of this Act abutting upon a street formed or laid out before that date :

(*b*) **Within one month after**, i.e., calendar month (Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3), excluding the day of the delivery of the plans, but including the day of giving notice by the Council. *Radcliffe* v. *Bartholomew*, *ante*, p. 203. Where the period would expire on any day between August 8th and September 14th (both inclusive), it is extended for twenty-eight days. Sec. 174, *post*.

(*c*) **Tribunal of appeal**. See secs. 175—186, *post*.

(*d*) **Domestic building**. See sec. 5 (26) and sec. 39, *ante*, for the meaning of this expression.

(*e*) **Abutting upon a street**. See note (*x*) on page 409.

(ii) If a person erecting the intended domestic building shall desire to deviate in any respect from the plan or plans certified by the district surveyor it shall be lawful for him to apply to the council who shall sanction such deviations on such conditions as they may think fit, provided that such conditions shall not in any case be more onerous than the conditions prescribed for domestic buildings erected after the commencement of this Act abutting on a street formed or laid out before that date (*f*) : 57 & 58 Vict. ch. ccxiii.

(iii) A person dissatisfied with any decision of the council or of a district surveyor under this section may appeal to the tribunal of appeal (*g*).

Laying out of new streets on cleared area.

44. When any person desires to re-arrange a cleared area previously occupied in whole or in part by buildings by forming or laying out a new street or streets or widening a street or streets he may make application to the council with such plans and sections as may be required by the council and the council may if under all the circumstances of the case they think it desirable modify or relax any of the foregoing provisions of this part of this Act subject to such conditions as the council may impose (*h*).

Within two months after (*i*) the receipt of the application the council shall either sanction the plans and sections, or give notice to the applicant of their disapproval thereof stating fully all their reasons for such disapproval.

Provided that if within the said period of two months the council fail to give notice of their disapproval of any such plan or section they shall be deemed to have given their sanction thereto.

Any applicant dissatisfied with the determination of the council may appeal to the tribunal of appeal (*g*).

Courts within a building.

45. Where a court wholly or in part open at the top but enclosed on every side and constructed or used for admitting light or air to a domestic building (*k*) is constructed in connexion with such domestic building and the depth of such court from the eaves or top of the parapet to the ceiling of the ground storey exceeds the length or breadth of such court adequate provision for the ventilation of such court shall be made and maintained by the owner (*l*) of the building by means of a communication between the lower end of the court and the outer air.

No habitable room (*l*) not having a window directly opening into the external air otherwise than into a court enclosed on every side shall be constructed in any building unless the width of such court measured from such window to the opposite wall shall be equal to half the height measured from the sill of such window to the eaves or top of the parapet of the opposite wall.

Provided that a court of which the greater dimension does not exceed twice the less dimension shall be held to comply with this

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(*f*) **Conditions prescribed, &c.** See sec. 41 (2), *ante*, and sec. 190, *post*.
(*g*) **Tribunal of appeal.** See secs. 175—186, *post*.
(*h*) **Subject to conditions.** See also sec. 190, *post*.
(*i*) **Within two months after.** See note to sec. 42 (iv), *supra*.
(*k*) **Domestic building.** For the meaning of this expression see sec. 5 (26) and sec. 39, *ante*.
(*l*) **Owner; habitable room.** Defined by sec. 5, sub-secs. (29) and (38), *ante*.

57 & 58 Vict. ch. ccxiii.

section if a court of the same area but square in shape would comply therewith.

No habitable room above the level of the ground storey not having a window directly opening into the external air otherwise than into a court open on one side the depth whereof measured from the open side exceeds twice the width shall be constructed in any building unless every window of such room be placed not nearer to the opposite wall of such court or to any other building than one-half the height of the top of such wall or building above the level of the sill of such window.

Superintending architect may define front or rear of buildings.

46. In any case when it may be necessary the superintending architect (*m*) shall determine which is the front and which is the rear of a building such determination to be evidenced by his certificate Any person dissatisfied with such certificate may appeal to the tribunal of appeal (*n*).

Heights of buildings limited.

47. A building (not being a church or chapel) shall not be erected of or be subsequently increased to a greater height (*o*) than eighty feet (exclusive of two storeys in the roof and of ornamental towers turrets or other architectural features or decorations) without the consent of the council (*p*).

Provided that where a contract shall have been lawfully made previously to the passing of this Act (*q*) for the erection or increase of a building to a greater height than eighty feet nothing in this section shall prevent the erection or increase of such building to any height to which it might have been lawfully erected or increased immediately before the passing of this Act.

This section shall not apply to the rebuilding to the same height as at present of any building existing at the passing of this Act of a greater height than eighty feet.

Provided also that where any existing buildings forming part of a continuous block or row of buildings exceed the height prescribed by this section nothing in this section shall prevent any other building in the same block or row belonging at the date of the passing of this Act to the same owner (*o*) from being carried to a height equal to but not exceeding that of the existing buildings.

Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes (*r*).

Procedure where greater height allowed.

48.—(1) Whenever the council consent to the erection of any building of a greater height than that prescribed by this Act (*s*) notice of such consent shall within one week after such consent has been given be published and served in such manner as the council may direct and the consent shall not be acted on until twenty-one days after such publication or service or in the event of any appeal against such consent until after the determination of such appeal.

(*m*) **Superintending architect.** Defined by sec. 5 (34), *ante*.
(*n*) **Tribunal of appeal.** See secs. 175—186, *post*.
(*o*) **Height; owner.** Defined by sec. 5, sub-secs. (21) and (29), *post*.
(*p*) **Consent of Council.** The Council may annex conditions to its consent. Sec. 190, *post*.
(*q*) **Contract made previously to Act.** See *Tanner* v. *Oldman*, *post*, p. 480.
(*r*) **Special Act; railway purposes.** See notes to sec. 31, *ante*.
(*s*) **Height prescribed by this Act.** See sec. 47, *supra*.

(2) (a) The owner (*t*) or lessee of any building or land within one hundred yards of the site of any intended building who may deem himself aggrieved by the grant of such consent in respect of the last-mentioned building; or 57 & 58 Vict. ch. ccxiii.

(b) Any applicant for consent which has been refused;

may respectively within twenty-one days after (*u*) the publication of notice of the consent or after the date of the refusal (as the case may be) appeal to the tribunal of appeal.

(3) Whenever such consent has been refused and the applicant to whom it has been refused intends to appeal against such refusal such applicant shall give notice within twenty-one days of (*u*) such refusal in such manner as the council may direct to the owner or lessee of any building or land within one hundred yards of the site of the building to which such refusal relates that he intends to appeal from such refusal.

(4) In the case of an appeal against the refusal of consent any owner or lessee of any building or land within one hundred yards of the site of the intended building may appear and be heard before the tribunal of appeal (*x*) against any application to reverse or vary the refusal.

Heights of buildings in certain cases.

49. After the commencement of this Act no existing building (other than a church or chapel) on the side of a street (*y*) formed or laid out after the seventh day of August one thousand eight hundred and sixty-two and of a less width than fifty feet shall without the consent of the council (*z*) be raised and no new building shall without the consent of the council be erected on the side of any such street so that the height (*y*) of such building shall exceed the distance of the front or nearest external wall (*y*) of such building from the opposite side of such street.

Where such building is erected or intended to be erected on a corner plot so as to abut upon (*a*) more than one street the height of the building shall (unless the council otherwise consent) be regulated by the wider of such streets so far as it abuts or will abut upon such wider street and also so far as it abuts or will abut upon the narrower of such streets to a distance of forty feet from the wider street Provided that any building erected or raised before the commencement of this Act to a height to which no objection could have been taken under any law then in force although exceeding the height provided in this section may be re-erected to its existing height.

Nothing in this section shall affect the exercise of any powers conferred upon any railway company by any special Act of Parliament for railway purposes (*b*).

Raising of buildings so as to comply with provisions of Act as to habitable rooms.

50. Nothing in this part of this Act contained shall prevent the raising of any building by increasing the height of the topmost storey (*c*) thereof to such an extent only as may be necessary for the purpose of bringing

(*t*) **Owner** is defined by sec. 5 (29), *ante*.
(*u*) **Within twenty-one days after.** See note to sec. 24, *ante*.
(*x*) **Tribunal of appeal.** See secs. 175—186, *post*.
(*y*) **Street; height; external wall.** Defined by sec. 5, sub-secs. (1), (21), and (15), *ante*.
(*z*) **Consent of Council.** The Council may annex conditions to its consent. Sec. 190, *post*.
(*a*) **Abut upon.** See note to sec. 77 of the Met. Man. Amend. Act, 1862, *ante*, for the meaning of "abut upon."
(*b*) **Special Act; railway purposes.** See notes to sec. 31, *ante*.
(*c*) **Topmost storey** is defined by sec. 5, sub-secs. (21) and (14), *ante*.

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any habitable rooms constructed in such topmost storey into conformity with the provisions of this Act relating to habitable rooms (*d*).

As to re-erection of certain working class dwellings of local authority.

51. Nothing in this part of this Act contained shall prevent the re-erection on the same site and of not greater dimensions of any dwelling-house (*e*) inhabited (*e*) or adapted to be inhabited by persons of the working class erected by a local authority (*e*) previously to the passing of this Act.

Saving for certain domestic buildings with stables in the rear.

52. In the case of domestic buildings (*f*) and buildings erected or adapted for use as stables such domestic buildings and such stable buildings being upon sites abutting (*g*) in the front upon a street (*h*) and in the rear (*h*) upon mews and such sites being of a depth of not more than one hundred and fifty feet measured from street to mews the following provisions shall in certain cases have effect:—

If the stable buildings be limited to a depth of fifty feet measured from the mews frontage and to a height of twenty-five feet measured from the level of the mews and if the open space required for the domestic building under section 41 of this Act be provided between the domestic building and the stable building the domestic building and the stable building may for all other purposes of the said section whether in one occupation or not be deemed to be one domestic building with the rear abutting upon a street.

PART VI. (*i*)—CONSTRUCTION OF BUILDINGS.

Structure and thickness of walls.

53. Subject to any byelaws (*k*) of the council made in pursuance of this Act walls shall be constructed of the substances and in the manner and of not less than the thickness prescribed by this Act or mentioned in the first schedule to this Act.

Rules as to recesses and openings.

54.—(1) Recesses and openings may be made in external walls (*l*) provided—

(a) That the backs of such recesses are not of less thickness than eight and a half inches; and

(b) That the area of such recesses and openings above the ground storey do not taken together exceed one-half of the whole area of the wall above the ground storey (*l*) in which they are made.

(2) Recesses may be made in party walls (*m*) provided—

(*d*) **Habitable rooms.** See sec. 5 (37) and (38), for the meaning of this expression. For the provisions as to the height of habitable rooms, see sec. 70 (1) (a) and (b).

(*e*) **Dwelling-house; inhabited; local authority.** Defined by sec. 5, sub-secs. (25), (37), and (42), respectively, *ante*.

(*f*) **Domestic buildings; street.** Defined by sec. 5, sub-secs. (26) and (1), *ante*.

(*g*) **Abutting upon.** See note to sec. 7 of the Metrop. Man. Amend. Act, 1862, *ante*, for the meaning of "abutting upon."

(*h*) **Front . . . rear.** See sec. 46, *ante*.

(*i*) **Part VI.** is subject to the exemptions in secs. 201—206, *post*.

(*k*) **Byelaws as to the thickness and substances of walls.** See sec. 164 (1), and notes (*x*) and (*z*) thereto, *post*.

(*l*) **External walls; ground storey.** Defined by sec. 5, sub-secs. (15) and (11), *ante*.

(*m*) **Recesses in party walls.** "Party wall" is defined by sec. 5 (16), *ante*. The right to cut into any party structure is subject to the liability to make good all damage occasioned to the adjoining premises (sec. 88 (8), *post*); and, except with the consent in writing of the adjoining owner and occupiers, is also subject to the condition that two months' previous notice be served on the adjoining owner, and that the work be begun within six months after such notice. Sec. 90 (1) and (4), *post*.

(a) That the backs of such recesses are not of less thickness than thirteen inches; and 57 & 58 Vict. ch. ccxiii.

(b) That over every recess so formed an arch of at least two rings of brickwork of the full depth of the recess be turned on every storey except in the case of recesses formed for lifts but where such recess does not exceed five inches in depth corbelling in brick or stone may be substituted for the arching; and

(c) That the area of such recesses do not taken together exceed one-half of the whole area of the wall of the storey in which they are made; and

(d) That such recesses do not come within thirteen and a half inches of the inner face of the external walls.

(3) An opening shall not be made in any party wall (*n*) except in accordance with the provisions of this Act in relation thereto.

Provided that it shall be lawful for the superintending architect (*o*) on application made to him in accordance with any rules made in that behalf by the council to give consent in writing to any modification or relaxation of the requirements of this section with respect to the area of recesses and openings in any special cases where he may think proper. The word area as used in this section shall mean the area of the vertical face or elevation of the wall or recess to which it refers.

55. All woodwork fixed in any external wall (*p*) except bressummers (*p*) and storey posts under the same and frames of doors and windows of shops on the ground storey (*p*) of any building shall be set back four inches at the least from the external face of such wall But loophole frames and frames of doors and windows may be fixed flush with the face of any external wall: Rules as to timber in external walls.

Provided that it shall be lawful for the council by byelaw (*q*) or otherwise to exempt from the provisions of this section oak teak or other wood provided the work be constructed to the satisfaction of the district surveyor.

56.—(1) Every bressummer (*r*) whether of wood or metal shall have a bearing in the direction of its length of four inches at least at each end upon a sufficient pier of brick or stone or upon a timber or iron storey post fixed on a solid foundation in addition to its bearing upon any party wall (*r*) or external wall (*r*) and the district surveyor shall have power in his discretion to require that every bressummer shall have such other storey posts iron columns stanchions or piers of brick or stone or corbels as may be sufficient to carry the superstructure and the ends of such bressummer if of wood shall not be placed nearer to the centre line of the party walls than four inches. Rules as to bressummers.

(2) At each end of every metallic bressummer a space shall be left equal to one quarter of an inch for every ten feet and also for any

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(*n*) **Opening in party wall.** See sec. 77 (3) and (4), *post*; and the preceding note.

(*o*) **Superintending architect** is defined by sec. 5 (34), *ante*.

(*p*) **External wall; bressummers; ground storey.** Defined by sec. 5, sub-secs. (15), (7), and (11), respectively, *ante*.

(*q*) **Byelaw.** Sec. 164, *post*, empowers the County Council to make byelaws with respect to woodwork in external walls; but none had been issued up to the date of the publication of this work.

(*r*) **Bressummer; party wall; external wall.** Defined by sec. 5, sub-secs. (7), (16), and (15), respectively, *ante*.

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fractional part of ten feet of the length of such bressummer to allow for expansion.

(3) A bond timber or wood plate shall not be built into any party wall and the ends of any wooden beam or joist bearing on such walls shall be at least four inches distant from the centre line of the party walls.

(4) Every bressummer bearing upon a party wall shall be borne by a templet or corbel of stone or iron tailed through at least half the thickness of the wall and of the full breadth of the bressummer.

(5) The end of any timber not permitted to be placed in or to have a bearing on a party wall may be carried on a corbel or templet of stone or iron or vitrified stoneware tailed into the wall to a distance of at least eight and a half inches or otherwise supported to the satisfaction of the district surveyor.

Height and thickness of parapets to external walls.

57. If any gutter any part of which is formed of combustible materials adjoin an external wall (*t*) such wall shall be carried up so as to form a parapet one foot at the least above the highest part of the gutter and the thickness of the parapet so carried up shall be at least eight and a half inches throughout.

Cases in which a wall to be deemed a party wall.

58. In either of the following cases :—

(a) When a wall is after the commencement of this Act built as a party wall in any part (*t*) ; or

(b) Where a wall built before or after the commencement of this Act becomes after the commencement of this Act a party wall in any part ;

the wall shall be deemed a party wall for such part of its length as is so used.

Height of party walls above roof.

59.—(1) Every party wall shall be carried up of a thickness in a building of the warehouse class (*u*) equal to the thickness of such wall in the topmost storey (*u*) and in any other building of eight and a half inches above the roof flat or gutter of the highest building adjoining thereto to such a height as will give a distance (in a building of the warehouse class exceeding thirty feet in height) of at least three feet and (in any other building) of fifteen inches measured at right angles to the slope of the roof or fifteen inches above the highest part of any flat or gutter as the case may be.

(2) Every party wall shall be carried up of the thickness aforesaid above any turret dormer lantern-light or other erection of combustible materials fixed upon the roof or flat of any building within four feet from such party wall and shall extend at the least twelve inches higher and wider on each side than such erection and every party wall shall be

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(*t*) **Party wall in any part.** "Party wall" is defined by sec. 5 (16), *ante*. Where the owner of a boundary wall, built on his own land, erected some closets against it, and his adjoining neighbour built a structure against the wall, resting a portion of the framework of the structure upon it, it was held, under the repealed Metropolitan Building Act, 1855, secs. 3 and 88, that the wall had become a party wall so far as it was used by the owner on the one hand and the adjoining neighbour on the other as a support for their buildings. *Knight* v. *Pursell*, 11 Ch. D. 412 ; 48 L. J. Ch. 395. A wall may be a party wall for part of its height only. *Drury* v. *Army and Navy Co-operative Supply, Ltd.*, *post*, p. 426.

(*u*) **Building of the warehouse class ; topmost storey.** Defined by sec. 5, sub-secs. (28) and (14), respectively, *ante*.

carried up above any part of any roof opposite thereto and within four feet therefrom. 57 & 58 Vict. ch. ccxiii.

60. In a party wall a chase (*x*) shall not be made wider than fourteen inches nor more than four and a half inches deep from the face of the wall nor so as to leave less than eight and a half inches in thickness at the back or opposite side thereof and a chase shall not be made within a distance of seven feet from any other chase on the same side of the wall or within thirteen inches from an external wall. No chase shall be made in a wall of less thickness than thirteen inches. Rules as to chases in party walls.

61.—(1) The flat gutter and roof of every building and every turret dormer lantern-light skylight or other erection placed on the flat or roof thereof shall be externally covered with slates tiles metal or other incombustible materials (*y*) except wooden cornices and barge-boards to dormers not exceeding twelve inches in depth and the doors door frames windows and window frames of such dormers turrets lantern-lights skylights or other erections. Rules as to construction of roofs.

(2) Every building exceeding thirty feet in height used wholly or in part as a dwelling-house (*z*) or factory and having a parapet shall be provided either—

(a) with a dormer window or a door opening on to the roof; or

(b) with a trap door furnished with a fixed or hinged step ladder leading to the roof; or

(c) with other proper means of access to the roof.

(3) The plane of the surface of the roof of a building of the warehouse class shall not incline from the external or party walls upwards at a greater angle than forty-seven degrees with the horizon Provided that this sub-section shall not apply to towers turrets or spires.

(4) The plane of the surface of the roof of any other building shall not incline from the external or party walls upwards at a greater angle than seventy-five degrees with the horizon Provided that this sub-section shall not apply to towers turrets or spires.

62.—(1) Not more than two storeys shall be constructed in the roof of any domestic building (*a*). Storeys in roofs.

(2) Any storey constructed in the roof of any domestic building the upper surface of the floor of which storey is at a height (*a*) of above sixty feet from the street level shall be constructed of fire-resisting materials (*b*) throughout.

63. Every new building (*c*) exceeding sixty feet in height (*c*) shall be Means of escape at top of high buildings.

(*x*) **Chase in party wall.** As to the limitations to the right to cut into a party structure, see note to sec. 54 (1), *ante*.

(*y*) **Incombustible materials.** Under the corresponding provision of the repealed Metropolitan Bldg. Act, 1855 (18 & 19 Vict. c. 122), sec. 19 (1), where a roof was covered externally with materials consisting of woven iron wire, coated with an oleaginous compound, which compound would ignite and burn away, leaving the wire-work uninjured, it was held that the roof was not covered with "incombustible materials." *Payne* v. *Wright*, No. (1) (1892), 1 Q. B. 104; 61 L. J. M. C. 7.

As to what are "fire-resisting" materials, see sched. 2, *post*. The expressions "incombustible" and "fire-resisting" are, however, apparently not synonymous.

(*z*) **Dwelling-house** is defined by sec. 5 (25), *ante*.

(*a*) **Domestic building; height.** Defined by sec. 5, sub-secs. (26) and (21), *ante*.

(*b*) **Fire-resisting materials,** i.e., any of the materials and things described in sched. 2, *post*. Sec. 5 (36), *ante*.

(*c*) **New building; height.** Defined by sec. 5, sub-secs. (6) and (21), *ante*.

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provided on the storeys the upper service of the floor whereof is above sixty feet from the street level with such means of escape in the case of fire for the persons dwelling or employed therein as can be reasonably required under the circumstances (*d*) of the case and no such storeys of such building shall be occupied until the council shall have issued a certificate that the provisions of this section have been complied with in relation thereto.

Rules as to chimneys and flues.

64.—(1) Chimneys built on corbels of brick stone or other incombustible materials (*e*) may be erected if the work so corbelled out do not project from the wall more than the thickness of the wall measured immediately below the corbel but all other chimneys shall be built on solid foundations (*f*) and with footings similar to the footings of the wall against which they are built unless they are carried upon iron girders with direct bearings upon party external or cross walls (*f*) to the satisfaction of the district surveyor.

(2) Chimneys and flues having proper soot doors of not less than forty square inches may be constructed at any angle but in no other case shall any flue be inclined at a less angle than forty-five degrees to the horizon and every angle shall be properly rounded:

All soot doors shall be at least fifteen inches distant from any woodwork.

(3) An arch of brick or stone or a bar of wrought iron of sufficient strength shall be built over the opening of every chimney to support the breast thereof and if the breast project more than four inches from the face of the wall and the jamb on either side be of less width than seventeen and a half inches the abutments shall be tied in by an iron bar or bars of sufficient strength turned up and down at the ends and built into the jambs for at least eight and a half inches on each side.

(4) A flue shall not be adapted to or used for any new oven furnace cockle steam-boiler or close fire used for any purpose of trade or business or to or for the range or cooking apparatus of any hotel tavern or eating-house unless the flue be surrounded with brickwork at least eight and a half inches thick from the floor on which such oven furnace cockle steam-boiler or close fire is situate to the level of the ceiling of the room next above the same.

(5) A flue shall not be used in connexion with a steam-boiler or hot-air engine unless the flue is at least twenty feet in height measured from the level of the floor on which such engine is placed.

(6) The inside of every flue and also the outside where passing through any floor or roof or behind or against any woodwork shall be rendered pargeted or lined with fire-resisting (*g*) piping of stoneware.

(7) The position and course of every flue shall be distinguished on the outside of the work as it is carried up by outline marks in some durable

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(*d*) **Escape from fire.** The County Council may make byelaws with respect to the means of escape from fire in buildings exceeding sixty feet in height. Sec. 164 (1), *post*. As to means of escape from factories and workshops, see the Factory and Workshop Acts, 1891, sec. 7, and 1895, secs. 10 and 11, *post*, vol. ii. tit. "*Factories, &c.*"; and from theatres and music halls, see the Met. Man. and Bldg. Acts Amend. Act, 1878, sec. 12, *post*, vol. ii. tit. "*Theatres*."

(*e*) **Incombustible materials.** See note (*y*) on page 417.

(*f*) **Foundation; party wall; external wall; cross wall.** Defined by sec. 5, subsecs. (9), (16), (15), (17), and (20), respectively, *ante*.

(*g*) **Fire-resisting.** See the list of fire-resisting materials described in sched. 2, *post*.

manner except when the exterior face of the flue forms part of the outer face of an external wall not likely to be built against.

(8) The jambs of every fireplace opening shall be at least eight and a half inches wide on each side of the opening thereof.

(9) The breast of every chimney and the brickwork surrounding every smoke flue shall be at least four inches in thickness.

(10) The back of every fireplace opening in a party wall from the hearth up to the height of twelve inches above the mantel shall be at least eight and a half inches thick.

(11) The thickness of the upper side of every flue when its course makes with the horizon an angle of less than forty-five degrees shall be at least eight and a half inches.

(12) Every chimney shaft or smoke flue shall be carried up in brick or stone work at least four inches thick throughout to a height of not less than three feet above the roof flat or gutter adjoining thereto measured at the highest point in the line of junction with such roof flat or gutter.

(13) The highest six courses of every chimney-stack or shaft shall be built in cement.

(14) The brickwork or stonework of any chimney shaft except that of the furnace of any steam engine brewery distillery or manufactory shall not be built higher above the roof flat or gutter adjoining thereto than a height equal to six times the least width of such chimney shaft at the level of such highest point in the line of junction unless such chimney shaft is built with and bonded to another chimney shaft not in the same line with the first or otherwise rendered secure.

(15) There shall be laid level with the floor of every storey before the opening of every chimney a slab of stone slate or other incombustible substance at the least six inches longer on each side than the width of such opening and at the least eighteen inches wide in front of the breast thereof.

(16) On every floor except the lowest floor such slab shall be laid wholly upon stone or iron bearers or upon brick trimmers or other incombustible materials but on the lowest floor it may be bedded on concrete covering the site or on solid materials placed on such concrete.

(17) The hearth or slab of every chimney shall be bedded wholly on brick stone or other incombustible substance and shall together with such substance be solid for a thickness of six inches at least beneath the upper surface of such hearth or slab.

(18) A flue shall not be built in or against any party structure unless it be surrounded with new brickwork (*h*) at least four inches in thickness properly bonded.

(19) A chimney breast or shaft built with or in any party wall shall not be cut away unless the district surveyor certifies that it can be done without injuriously affecting the stability of any building.

(20) A chimney shaft jamb breast or flue shall not be cut into except for the purpose of repair or during some one or more of the following things:—

(a) Letting in or removing or altering flues pipes or funnels for the

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(*h*) **Flues.** Where a building owner constructed flues against a party wall which had been erected three years previously, and built the other three sides of the flues with new bricks, it was held by North, J., that the Act had not been complied with. *Aerated Bread Co.* v. *Shepherd*, 13 T. L. R. 311; (1897) W. N. 33 (9).

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conveyance of smoke hot air or steam or letting in removing or altering smoke jacks;

(b) Forming openings for soot doors such openings to be fitted with a close iron door and frame;

(c) Making openings for the insertion of ventilating valves subject to the following restriction that an opening shall not be made nearer than twelve inches to any timber or combustible substance.

(21) Timber or woodwork shall not be placed—

(a) In any wall or chimney breast nearer than twelve inches to the inside of any flue or chimney opening;

(b) Under any chimney opening within ten inches from the upper surface of the hearth of such chimney opening;

(c) Within two inches from the face of the brickwork or stonework about any chimney or flue where the substance of such brickwork or stonework is less than eight and a half inches thick unless the face of such brickwork or stonework is rendered.

(22) Wooden plugs shall not be driven nearer than six inches to the inside of any flue or chimney opening nor any iron holdfast or other iron fastening nearer than two inches thereto.

Furnace chimney shafts.

65. Unless the council otherwise permit every chimney shaft for the furnace of a steam engine brewery distillery or manufactory shall be constructed in conformity with the following rules:—

(1) Every shaft shall be carried up throughout in brickwork and mortar of the best quality and if detached shall taper gradually from the base to the top of the shaft at the rate of at least two inches and a half in ten feet of height:

(2) The thickness of brickwork at the top of the shaft and for twenty feet below the top shall be at least eight and a half inches and shall be increased at least one half brick for every additional twenty feet measured downwards:

(3) Every cap cornice pedestal plinth string course or other variation from plain brickwork shall be provided as additional to the thickness of brickwork required under this Act and every cap shall be constructed and secured to the satisfaction of the district surveyor:

(4) The foundation (*i*) of the shaft shall always be made to the satisfaction of the district surveyor on concrete or other sufficient foundation:

(5) The footings shall spread all round the base by regular offsets to a projection equal to the thickness of the enclosing brickwork at the base of the shaft and the space enclosed by the footings shall be filled in solid as the work progresses:

(6) The width of the base of the shaft if square shall be at least one tenth of the proposed height of the shaft or if the same is round or of any other shape than one twelfth of the height:

(7) Any fire bricks built inside the lower portion of the shaft shall be provided as additional to and independent of the thickness of brickwork prescribed by these rules and shall not be bonded therewith.

Rules as to close fires and

66.—(1) The floor under every oven copper steam boiler or stove which is not heated by gas and the floor around the same shall for a space of

(*i*) **Foundation** is defined by sec. 5 (9), *ante*.

eighteen inches be formed of materials of an incombustible (*k*) and non-conducting nature not less than six inches thick. 57 & 58 Vict. ch. ccxiii.

(2) A pipe for conveying smoke or other products of combustion heated air steam or hot water shall not be fixed against any building on the face adjoining to any street or public way. pipes for conveying vapour, &c.

(3) A pipe for conveying smoke or other products of combustion shall not be fixed nearer than nine inches to any combustible materials (*k*).

(4) A pipe for conveying heated air or steam shall not be fixed nearer than six inches to any combustible materials.

(5) A pipe for conveying hot water shall not be placed nearer than three inches to any combustible materials (*k*).

Provided that the restrictions imposed by this section with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of pipes for conveying hot water or steam at low pressure.

For the purposes of this section hot water or steam shall be deemed to be at low pressure when provided with a free blow off.

67. The floor over any room or enclosed space in which a furnace is fixed and any floor within eighteen inches from the crown of an oven shall be constructed of fire-resisting materials (*l*). Floors above furnaces and ovens.

68. In every public building (*m*) and in every other building of more than one hundred and twenty-five thousand feet in cubical extent (*m*) and which is constructed or adapted to be used as a dwelling-house (*m*) for separate families the floors of the lobbies corridors passages and landings and also the flights of stairs shall be of fire-resisting material and carried by supports of a fire-resisting material (*l*). Rules as to accesses and stairs in certain buildings.

69. (1) In every building constructed or adapted to be occupied in separate tenements by more than two families the principal staircase used by the several families in common shall be ventilated upon every storey above the ground storey (*n*) by means of windows or skylights opening directly into the external air or shall be otherwise adequately ventilated. Ventilation of staircases.

(2) The principal staircase in every building being a dwelling-house (*n*) and not subject to the provisions of sub-section 1 of this section, shall be ventilated by means of a window or skylight opening directly into the external air.

70. (1) (a) Every habitable room (*o*) except rooms wholly or partly in the roof shall be in every part at least eight feet six inches in height from the floor to the ceiling; Rules as to habitable rooms.

(b) Every habitable room wholly or partly in the roof of any building shall be at least eight feet in height from the floor to the ceiling throughout not less than one-half the area of such room;

(c) Every habitable room shall have one or more windows opening

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(*k*) **Incombustible materials.** See *Payne* v. *Wright* (No. 1), *ante*, p. 417.

(*l*) **Fire-resisting materials,** i.e., any of the materials and things described in sched. 2, *post*. Sec. 5 (36), *ante*.

(*m*) **Public building; cubical extent; dwelling-house.** Defined by sec. 5, sub-secs. (27), (24), and (25), respectively, *ante*.

(*n*) **Ground storey; dwelling-house.** Defined by sec. 5, sub-secs. (11) and (25), *ante*.

(*o*) **Habitable room.** Defined by sec. 5, sub-sec. (38), *ante*.

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directly into the external air or into a conservatory with a total superficies clear of the sash frames free from any obstruction to the light equal to at least one-tenth of the floor area of the room and so constructed that a portion equal to at least one-twentieth of such floor area can be opened and the opening in each case shall extend to at least seven feet above the floor level but a room having no external wall (*p*) or a room constructed wholly or partially in the roof may be lighted through the roof by a dormer window with a total superficies clear of the sash frames free from any obstruction to the light equal to at least one-twelfth of the floor area of the room and so constructed that a portion of such window equal to at least one twenty-fourth of such floor area can be opened and the opening in each case shall extend to at least five feet above the floor level or such room may be lighted by a lantern light of which a portion equal to at least one-twentieth of the floor area can be opened;

(d) In a building being a dwelling-house every basement room (*q*) having a wooden floor other than a floor constructed of solid wood bedded on concrete shall have a sufficient space between the ground and the floor surfaces to admit of ventilation by means of air-bricks or otherwise;

(e) Every habitable room constructed over a stable shall be separated from the stable by a floor which shall have in every part not occupied by a joist or girder a layer of concrete pugging of good quality, or of other solid construction three inches in thickness finished smooth upon the upper surface and properly supported and the under side of such floor shall be ceiled with lath and plaster of good quality or of other solid construction;

Any staircase or gallery or structure by which such rooms shall be approached shall be separated from any stable to which it may adjoin by a brick wall not less than nine inches in thickness:

(f) Nothing in this Act shall affect alter or repeal any of the provisions of the Public Health (London) Act 1891 relating to underground rooms (*r*).

(2) If any person knowingly suffer any room constructed after the commencement of this Act that is not constructed in conformity with this section to be inhabited he shall in addition to any other liabilities (*s*) to which he may be subject be liable to a penalty (*t*) for every day during which such room is inhabited.

Rules as to party arches over public ways.

71.—(1) Every party arch (*u*) or party floor and every arch or floor over any public way or any passage leading through or under a building or part of a building to premises in other occupation shall be formed of brick stone or other incombustible materials (*x*).

(2) If an arch of brick or stone be used it shall be of the thickness of eight and a half inches at least and the centre of such arch shall be

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(*p*) **External wall.** Defined by sec. 5 (15), *ante*.

(*q*) **Basement room.** See the definition of "basement storey" in sec. 5 (12), *ante*. See also sec. 40, *ante*, as to the lighting and ventilation of habitable basements.

(*r*) **Underground rooms.** See secs. 96—98 of the Pub. Hlth. (London) Act, 1891, *ante*.

(*s*) **Other liabilities.** See sec. 203 (3) (c), *post*, and sec. 96 (2) of the Pub. Hlth. (London) Act, 1891, *ante*.

(*t*) **Penalty.** The amount of the penalty is not specified. It is recoverable summarily. Sec. 166, *post*.

(*u*) **Party arch** is defined by sec. 5 (19), *ante*.

(*x*) **Incombustible materials.** See note to sec. 61 (1), *ante*.

higher than the springing at the rate of one inch at least for every foot and also for any fractional part of a foot of span. 57 & 58 Vict. ch. ccxiii.

(3) If an arch or floor of other incombustible material be used it shall be constructed in such manner as may be approved by the district surveyor.

Rules as to arches under public ways.

72.—(1) Every arch or other construction under any passage leading to premises in other occupation or under any public way (*y*) or intended public way shall be formed of brick stone or other incombustible materials.

(2) If an arch of brick or stone be used it shall—

(a) Where its span does not exceed ten feet be of the thickness of eight and a half inches at least;

(b) Where its span exceeds ten but does not exceed fifteen feet be of the thickness of thirteen inches at least; and

(c) Where its span exceeds fifteen feet be of such thickness as may be approved by the district surveyor.

(3) If an arch or other construction of other incombustible material (*z*) be used it shall be constructed in such manner as may be approved by the district surveyor.

Rules as to projections.

73. The following provisions shall (except with the consent of the council) apply to projections from buildings (*a*):—

(1) Every coping cornice string-course facia window-dressing portico porch balcony verandah balustrade outside landing outside stairs and outside steps and architectural projection or decoration whatsoever and also the eaves barge-boards and cornices to any overhanging roof except the cornices and dressings to the window fronts of shops and except the eaves barge-boards and cornices to detached and semi-detached dwelling-houses (*b*) and to other dwelling-houses in which the party walls (*b*) are corbelled out so as to project four inches beyond such eaves barge-boards or cornices shall be of brick tile stone artificial stone slate cement or other fireproof material:

For the purpose of this sub-section a pair of semi-detached houses shall be deemed to be one building:

(2) Every balcony cornice or other projection shall be tailed into the wall of the building and weighted or tied down to the satisfaction of the district surveyor and no cornice shall exceed in projection two feet six inches over the public way:

(3) In a street or way (*b*) of a width not greater than thirty feet any shop front may project beyond the external wall (*b*) of the building to which it belongs to any extent not exceeding five inches, and any cornice of any such shop front may project to any extent not exceeding thirteen inches and in any street or way of a width greater than thirty feet any shop front may project to any extent not exceeding ten inches and any cornice of any such shop front may

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(*y*) **Arch under public way.** Way is defined by sec. 5 (2), *ante*. No vault, arch, or cellar, must be made under any street without the consent of the vestry or district board. Met. Man. Act, 1855, sec. 101, *ante*.

(*z*) **Incombustible materials.** See note (*y*) on page 417.

(*a*) **Projections from buildings.** By sec. 164, *post*, the County Council is empowered to make byelaws for the regulation of lamps, signs, and other overhanging structures. As to the power of the vestries and district boards to require the removal of projections which are an annoyance, danger or obstruction, see the Met. Man. Act, 1855, secs. 119 and 120, and notes thereto, *ante*; and as to annoyances from stalls, show boards, baskets and wares, see the Metropolitan Paving Act, 1817, sec. 65, *post*, p. 504.

(*b*) **Dwelling-house; street; way; external wall; party wall.** Defined by sec. 5, sub-secs. (25), (1), (2), (15), and (16) respectively, *ante*.

project to any extent not exceeding eighteen inches beyond the external wall (*c*) of the building to which it belongs over the ground of the owner of the building provided that this provision shall not authorise in any such street the projection of any part of any such shop front other than the cornice on or over the public way or any land to be given up to the public way:

(4) No part of the woodwork of any shop front shall be fixed higher than twenty-five feet above the level of the pavement of the public footpath in front of the shop. No part of the woodwork of any shop front shall be fixed nearer than four inches to the centre of the party wall (*c*) where the adjoining premises are separated by a party wall or nearer than four inches to the face of the wall of the adjoining premises where the adjoining premises have a separate wall, unless a pier or corbel of stone brick or other incombustible material (*d*) four inches wide at the least be placed as high as such woodwork, and projecting throughout an inch at the least in front thereof between such woodwork and the centre of the party wall or the separate wall as the case may be:

(5) In a street of a width not less than forty feet or to a building the front wall of which is not at a less distance than forty feet from the opposite boundary of the street bay windows to dwelling-houses may be erected on land belonging to the owner of the building, notwithstanding the provisions of this Act relating to buildings beyond the general line of buildings (*e*) in streets provided that such bay windows—

(a) Do not exceed three storeys in height above the level of the footway;

(b) Do not project more than three feet from the main wall of the building to which they are attached;

(c) Do not project in any part within the prescribed distance of the centre of the roadway (*c*).

(d) Are in no part nearer to the centre of the nearest party wall than the extreme amount of their projection from the main wall of the building to which they are attached;

(e) Do not taken together exceed in width three-fifths of the frontage of the building towards the street to which such bays face;

(f) Are not constructed upon any part of the public way or upon any land agreed to be given up to the public way; and

(g) Shall not be used for trade purposes:

Bay windows to which the foregoing rules do not apply shall not be erected without the consent of the council (*f*) after consulting the local authority (*g*):

(*c*) **External wall; party wall; prescribed distance; centre of the roadway.** Defined by sec. 5, sub-secs. (15), (16), (5), and (4) respectively, *ante*.

(*d*) **Incombustible materials.** See note (*y*) on page 417.

(*e*) **General line of buildings.** See sec. 22, *et seq.*, *ante*.

(*f*) **Without consent of Council.** The County Council may annex conditions to its consent. Sec. 190, *post*. Where a projecting verandah was erected without the permission of the Met. Bd. Wks., in contravention of the corresponding provisions of the repealed Met. Bldg. Act, 1855, sec. 38, it was held that a private person, in the absence of obstruction to his light and air, could not sue alone, and that proceedings, if any, must be taken by the Attorney-General *ex officio*, or at the relation of the Met. Bd. Wks. *Brooks* v. *Terry*, 4 T. L. R. 678. As to compelling by *mandamus* a district surveyor to take action, see *Reg.* v. *Redman*, 6 T. L. R. 9.

(*g*) **Local authority.** Defined by sec. 5 (42) *ante*.

(6) In a street of a width not less than forty feet or to a building the front wall of which is not at a less distance than forty feet from the opposite boundary of the street projecting oriel windows or turrets may be constructed Provided that— 57 & 58 Vict. ch. cexiii.

(a) No part of any such projection extend more than three feet from the face of the front wall of the building or more than twelve inches over the public way ;

(b) No part of any such projection be less than ten feet above the level of the footway of the street ;

(c) No part of any such projection (where it overhangs the public way) be within a distance of four feet of the centre of the nearest party wall ;

(d) On no floor shall the total width of any such projections taken together exceed three-fifths of the length of the wall of the building on the level of that floor ;

(e) Every such projection be constructed to the satisfaction of the district surveyor or in the event of disagreement to the satisfaction of the superintending architect (*h*) whose determination shall be final :

Oriel windows or turrets to which the foregoing rules do not apply shall not be erected without the consent of the council (*i*) after consulting the local authority (*h*) :

(7) The roof flat or gutter of every building and every balcony verandah shop front or other similar projection or projecting window shall be so arranged and constructed and so supplied with gutters and pipes as to prevent the water therefrom from dropping upon or running over any public way.

(8) Except in so far as is permitted by this section in the case of shop fronts and projecting windows and with the exception of water pipes and their appurtenances copings string courses cornices facias window dressings and other like architectural decorations no projection from any building shall extend beyond the general line of buildings in any street except with the permission of the council (*i*) after consulting the local authority (*h*).

Separation of buildings.

74.—(1) Every building shall be separated either by an external wall or by a party wall or other proper party structure (*k*) from the adjoining building (if any) and from each of the adjoining buildings (if more than one).

(2) In every building exceeding ten squares in area (*k*) used in part for purposes of trade or manufacture and in part as a dwelling-house (*k*) the part used for the purposes of trade or manufacture shall be separated from the part used as a dwelling-house by walls and floors constructed of fire-resisting materials (*l*) and all passages stair-cases and other means of approach to the part used as a dwelling-house shall be constructed throughout of fire-resisting materials. The part used for purposes of trade or manufacture shall (if extending to more than two hundred and fifty

(*h*) **Local authority ; superintending architect.** Defined by sec. 5 (42) and (34), *ante*.

(*i*) **Without consent of Council.** See note (*f*) on page 424.

(*k*) **External wall; party wall; party structure; square; area; dwelling-house.** Defined by sec. 5, sub-secs. (15), (16), (20), (23), (22), and (25), respectively, *ante*.

(*l*) **Fire-resisting materials**, i.e., any of the materials and things described in sched. 2, *post*. Sec. 5 (36), *ante*.

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thousand cubic feet) be subject to the provisions of this Act relating to the cubical extent of buildings of the warehouse class (*m*).

Provided that there may be constructed in the walls of such staircases and passages such doorways as are necessary for communicating between the different parts of the building and there may be formed in any walls of such building openings fitted with fire-resisting doors.

(3) In every building exceeding twenty-five squares in area containing separate sets of chambers or offices or rooms tenanted or constructed or adapted to be tenanted by different persons the floors and principal staircases shall be of fire-resisting materials :

But this provision shall not entitle the district surveyor to charge for the inspection (*n*) of each set of chambers as a separate building.

Cubical extent of buildings.

75. Except as in this section provided no building of the warehouse class (*o*) shall extend to more than two hundred and fifty thousand cubic feet unless divided by party walls (*p*) in such manner that no division thereof extend to more than two hundred and fifty thousand cubic feet.

No addition shall be made to any building of the warehouse class or to any division thereof so that the cubical extent (*o*) of any such building or division shall exceed two hundred and fifty thousand cubic feet.

The restriction contained in this section upon the cubical extent of a building shall not apply to any building which being at a greater distance than two miles from Saint Paul's Cathedral is used wholly for the manufacture of the machinery and boilers of steam vessels or for a retort-house or the manufacture of gas or for generating electricity provided that such building consist of one floor only and be constructed of brick stone iron or other incombustible material (*q*) throughout and shall not be used for any purpose other than such as hereinbefore specified Every such building shall for the purpose of the provisions of this Act with respect to special buildings be deemed to be a building to which the general rules of this Act are inapplicable (*r*).

Consent to larger dimensions.

76. Where the council are satisfied on the report of the superintending architect (*s*) and of the chief officer of the fire brigade (*t*) that additional cubical extent (*s*) is necessary for any building to be used for any trade or manufacture and are satisfied that proper arrangements have been or will be made and maintained for lessening so far as reasonably practicable

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(*m*) **Buildings of warehouse class.** See sec. 5 (28), *ante*, and sec. 75, *post*.

(*n*) **Charge for inspection.** See sec. 154 (1), *post*.

(*o*) **Building of the warehouse class; cubical extent.** Defined by sec. 5, sub-secs. (28) and (24), *ante*.

(*p*) **Party wall** is defined by sec. 5 (16), *ante*. Where a building of the warehouse class was erected, divided by party walls, one portion of the building extending to five storeys and the other to one storey, it was held that the dividing wall was a party wall up to the height of the lower building, but was not a party wall above the line where it ceased to divide the two buildings. *Drury* v. *Army and Navy Co-operative Supply, Ltd.* (1896), 2 Q. B. 271 ; 65 L. J. M. C. 169. See also *Johnston* v. *Mayfair Property Co.* (1893), W. N. 73. A wall may also be a party wall for part of its length only. Sec. 58, *ante*.

(*q*) **Incombustible material.** See note to sec. 61 (1), *ante*.

(*r*) **General rules of Act inapplicable.** See sec. 82, *post*, requiring application to the County Council before erecting buildings to which the general provisions of this part of the Act are inapplicable.

(*s*) **Superintending architect; cubical extent.** Defined by sec. 5, sub-secs. (34) and (24) respectively, *ante*.

(*t*) **The chief officer of the fire brigade** is appointed by the County Council under the Metropolitan Fire Brigade Act, 1865, sec. 7, *post*, vol. ii. tit. "*Fire Brigade*."

danger from fire (*u*) the council may consent (*x*) to such building containing additional cubical extent: 57 & 58 Vict. ch. ccxiii.

Provided that such building shall not—

(i) Extend to a number of cubic feet exceeding four hundred and fifty thousand or any less number allowed by the council without being divided by party walls (*y*) in such manner that the cubical extent of each division do not exceed that number;

(ii) Exceed sixty feet in height (*z*);

(iii) Be used for the purpose of any trade or manufacture involving the use of explosive or inflammable materials.

Such consent shall continue in force only while the said building is actually used for the purposes of the trade or manufacture in respect of which the consent was granted.

Rules as to uniting buildings.

77.—(1) Buildings shall not be united (*a*) except where they are wholly in one occupation or are constructed or adapted to be so.

(2) Buildings shall not be united if when so united and considered as one building only they would not be in conformity with this Act.

(3) An opening shall not be made in any party wall or in two external walls (*b*) dividing buildings which if taken together (*c*) would extend to more than two hundred and fifty thousand cubic feet except under the following conditions:—

(a) Such opening shall not exceed in width seven feet or in height eight feet and such opening or openings taken together shall not exceed one-half the length of such party wall on each floor of the building in which they occur;

(b) Such opening shall have the floor jambs and head formed of brick stone or iron and be closed by two wrought iron doors each one-fourth of an inch thick in the panel at a distance from each other of the full thickness of the wall fitted to rebated frames without woodwork of any kind or by wrought iron sliding doors or shutters properly constructed fitted into grooved or rebated iron frames;

(c) If the thickness of the wall be not less than twenty-four inches or the doors be placed at a distance from each other of not less than twenty-four inches such opening may be nine feet six inches in height.

(4) Whenever any buildings which have been united cease to be in

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(*u*) **Danger from fire.** See sec. 3, and notes thereto, *ante*.

(*x*) **Council may consent.** The County Council may annex conditions to their consent. Sec. 190, *post*.

(*y*) **Party walls.** See note to sec. 75, *supra*.

(*z*) **Height.** Defined by sec. 5 (21), *ante*.

(*a*) **Buildings shall not be united.** The alteration of an old building by an addition, unless the addition was at some time a separate building in itself, was held not to be an uniting of two buildings under the repealed Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), sec. 28, rule 2. *Scott* v. *Legg*, 10 Q. B. D. 236; 46 L. J. M. C. 267.

(*b*) **Party wall; external wall.** Defined by sec. 5, sub-secs. (16) and (15) respectively, *ante*.

(*c*) **Buildings taken together.** Where two houses were united by means of an opening in a party wall, it was held, under the corresponding provisions of the repealed Met. Bldg. Act, 1855, sec. 28, that the two houses must be considered as one building for the purpose of ascertaining their cubical extent, when making an opening in the party wall of a third adjoining house. *Ashby* v. *Woodthorpe*, 33 L. J. M. C. 68; 27 J. P. 792. It was held further that the district surveyor was admissible as a witness to prove that the wall was a party wall and not a cross wall. *Ib.*

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one occupation all openings made for the purpose of uniting the same in any party wall between the buildings or in any external wall shall be stopped up with brick or stone work not less than thirteen inches in thickness (except in the case of a wall eight and a half inches in thickness in which case eight and a half inches shall be sufficient) and properly bonded with such wall and any timber not in conformity with this Act placed in the wall shall be removed.

(5) Whenever any buildings which have been united cease to be in one occupation the owner (*d*) thereof shall forthwith give notice to the district surveyor and shall cause any openings made in the party wall to be stopped up and bonded as aforesaid.

Construction of public buildings.

78. Notwithstanding anything in this Act every public building (*e*) including the walls roofs floors galleries and staircases and every structure and work constructed or done in connexion with or for the purposes of the same shall be constructed in such manner as may be approved by the district surveyor (*f*) or in the event of disagreement may be determined by the tribunal of appeal (*g*) and save so far as respects the rules of construction (*h*) every public building shall throughout this Act be deemed to be included in the term building and be subject to all the provisions of this Act in the same manner as if it were a building erected for a purpose other than a public purpose.

No public building shall be used as such until the district surveyor or the tribunal of appeal shall have declared his or their approval of the construction thereof.

After the district surveyor shall have so declared his approval or shall certify that it has been constructed as directed by the tribunal of appeal any work affecting or likely to affect the building shall not be done to in or on the building without the approval of the district surveyor or such certificate as aforesaid.

Conversion of houses, &c., into public buildings.

79. Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building (*e*) such conversion or alteration shall be carried into effect and the public building thereby formed including the walls roofs floors galleries and staircases thereof shall be constructed in such manner as may be approved by the district surveyor (*f*) or in the event of disagreement may be determined by the tribunal of appeal (*g*) and the provisions of this Act shall apply to such alteration or conversion as though it were the construction of a public building.

Staircases in churches and chapels.

80. The following rules shall be observed with respect to new churches chapels meeting-houses public halls public lecture rooms public exhibition

(*d*) **Owner.** Defined by sec. 5 (29), *ante*.

(*e*) **Public building** is defined by sec. 5 (27), *ante*, and includes, *inter alia*, a public theatre. Under the Met. Man. and Bldg. Acts, Amend. Act, 1878, and the Met. Bd. Wks. (Various Powers) Act, 1882, *post*, vol. ii. tit. "*Theatres*," the County Council has extensive powers with respect to the position, construction, and exits of theatres and other places of public resort.

(*f*) **Manner approved by district surveyor.** Under the corresponding provision of the repealed Metropolitan Building Act, 1855, sec. 30, it was held that the manner of erecting public buildings was not regulated by the rules of construction in the Act, but by the discretion of the district surveyor, subject to an appeal to the Met. Bd. Wks. *Reg.* v. *Carruthers*, 33 L. J. M. C. 107 ; 4 B. & S. 804.

(*g*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*h*) **Rules of construction**, i.e., secs. 53—77, *ante*, and sched. 1, *post*.

rooms and public places of assembly or additions or alterations by which increased accommodation is to be provided to existing churches chapels and meeting-houses public halls public lecture rooms public exhibition rooms or public places of assembly :— 57 & 58 Vict. ch. ccxiii.

(a) Every staircase for the use of the public shall be supported and enclosed by brick walls not less than nine inches thick. The treads of each flight of stairs shall be of uniform width :

(b) No staircase internal corridor or passage-way for the use of the public shall be less than four feet six inches wide Provided that where not more than two hundred persons are to be accommodated in such church chapel meeting house hall lecture room exhibition room or place of assembly such staircase internal corridor or passage-way may be of the width of three feet six inches :

(c) Every staircase corridor or passage-way for the use of the public and which communicates with any portion of the building intended for the accommodation of a larger number of the public than four hundred shall be increased in width by six inches for every additional one hundred persons until a maximum width of nine feet be obtained Provided always that in every case where the staircases are six feet wide and upwards they shall be divided by a hand-rail Provided also that in lieu of a single staircase corridor or passage-way of the width in this sub-section prescribed it shall be lawful to substitute two staircases corridors or passage-ways each being of a width at least equal to two-thirds of the width in this sub-section prescribed for the single staircase corridor or passage-way but so that neither of such two substituted corridors staircases or passage-ways shall be less than three feet six inches wide :

(d) In all cases where a portion of the public is to be accommodated over or at a higher level than others of the public a separate means of exit of the width above prescribed for staircases internal corridors or passage-ways and communicating directly with the street or open space shall be provided from each floor or level :

(e) All doors and barriers shall be made to open outwards and no outside locks or bolts are to be affixed thereto.

Application of Act to buildings under railway arches.

81. Where a building erected after the commencement of this Act under or in or by inclosure of a railway arch (*i*) or abutting thereon is constructed or adapted to be used for human habitation this Act shall apply to the building and to every work done to in or on the same in like manner and to the like extent as far as may be as if the building were built in any other position.

Part VII. (*k*)—Special and Temporary Buildings and Wooden Structures.

Application to council for buildings to which rules of Act are inapplicable.

82.—(1) Where a builder (*l*) is desirous of erecting an iron building or structure or any other building or structure to which the general provisions of part vi. of this Act are inapplicable or in the opinion of the council

(*i*) **Building under railway arch.** This section must be read subject to the exemptions relating to railway buildings contained in sec. 201 (8), *post*.

(*k*) **Part VII.** See secs. 86 and 201—206, as to exemptions from this part.

(*l*) **Builder; building of the warehouse class; cubical extent.** Defined by sec. 5, sub-secs. (33), (28), and (34), respectively, *ante*.

inappropriate having regard to the special purpose for which the building or structure is designed and actually used he shall make an application to the council accompanied by a plan (*m*) of the proposed building with such particulars as to the construction thereof as may be required by the council.

(2) The council if satisfied with such plan and particulars shall signify their approval of the same in writing and thereupon the building may be constructed according to such plan and particulars but the council shall not authorise any building of the warehouse class (*n*) to be erected of greater cubical extent (*o*) than two hundred and fifty thousand cubic feet except in accordance with the foregoing provisions of this Act.

(3) The council may for the purpose of regulating the procedure in relation to such applications issue such general rules as they think fit as to the time and manner of making applications and as to the plans to be presented the expenses to be incurred and any other matter or thing connected therewith.

(4) All expenses incurred in and about the obtaining the approval of the council shall be paid by the builder to the superintending architect(*o*) or to such other person as the council may appoint and in default of payment may be recovered in a summary manner (*p*).

(5) A copy of any plans and particulars approved by the council shall be furnished to the district surveyor within whose district the building to which such plans and particulars relate is situate and it shall be his duty to ascertain that the same is built in accordance with the said plans and particulars (*q*).

Control by council of certain temporary buildings.

83. Where an application is made to the council by any person stating his desire to erect in any place an iron or other building or structure of a temporary character (*r*) to which the general provisions of part vi. of this Act are inapplicable the council may if they approve of the plan and particulars of the building or structure limit the period during which it shall be allowed to remain in that place and may make their approval subject to such conditions as to the removal of the building or structure or otherwise as they think fit and if at the expiration of that period the building or structure be not removed in accordance with those conditions the council may serve a notice (*s*) on the occupier or owner (*t*) of such building or structure requiring him to remove it within a reasonable time specified in the notice and if the occupier or owner fail to remove such building or structure within the time named the council may notwithstanding the imposition and recovery of any penalty (*u*) cause complaint thereof to be made before a petty sessional court (*x*) who shall thereupon

(*m*) **Accompanied by plan.** This becomes the property of the County Council.

(*n*) **Builder; building of the warehouse class; cubical extent.** See note (*l*) on page 429.

(*o*) **Superintending architect** is defined by sec. 5 (34), *ante*.

(*p*) **Summary manner.** See sec. 166, *post*.

(*q*) **District surveyor's duty.** In case of neglect he may be compelled by *mandamus* to perform his duty. *Reg.* v. *Redman*, 6 T. L. R. 9.

(*r*) **Building of a temporary character.** See note to sec. 84, *infra*.

(*s*) **Serve a notice.** The notice must be in writing (sec. 187, *post*), and may be served in the manner provided by sec. 188, *post*.

(*t*) **Occupier or owner.** Defined by sec. 5, sub-secs. (30) and (29), *ante*.

(*u*) **Penalty.** See sec. 200 (3) (c), *post*.

(*x*) **Petty sessional court** means a court of summary jurisdiction consisting of two or more justices when sitting in a petty sessional court house, and includes the Lord Mayor of the City of London, and any alderman of that City, and any metropolitan or

issue a summons requiring such occupier or owner to appear to answer such complaint and if the said complaint is proved to the satisfaction of the court the court may make an order in writing authorising the council to enter upon the land upon which such building is situated and to remove or take down the same and do whatever may be necessary for such purpose and also to remove the materials of which the same is composed to a convenient place and (unless the expenses of the council be paid to them within fourteen days after such removal) sell the same as they think proper. 57 & 58 Vict. ch. ccxiii.

Wooden structures not to be erected without licence of council.

84.—(1) No person shall set up in any place any wooden structure (*y*) (unless it be exempt from the operation of this part of this Act) (*z*) except hoardings enclosing vacant land and not exceeding in any part twelve feet in height without having first obtained for that purpose a licence from the council and the licence may contain such conditions with respect to the structure and the time for which it is to be permitted to continue in the said place as the council think expedient.

(2) Provided that a licence shall not be required in the case of any wooden structure of a movable or temporary character erected by a builder for his use (*a*) during the construction alteration or repair of any building unless the same is not taken down or removed immediately after such construction alteration or repair.

Provided that this section shall not extend to or apply within the City (*b*) or to any hoarding duly licensed by the local authority (*b*) under any statutory powers in that behalf (*c*).

Piles of loose timber not regarded as structures.

85. This part of this Act shall not apply in the case of a pile stack or store of timber (*d*) not being a structure affixed or fastened to the ground.

As to structures of railway companies.

86. Structures or erections erected or set up upon the premises of any railway company and used for the purposes of or in connexion with the traffic of such railway company (*e*) shall be exempt from the operation of this part of this Act.

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borough police magistrate, or other stipendiary magistrate, when sitting in a court house or place at which he is authorised by law to do alone any act authorised to be done by more than one justice of the peace. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 13 (12).

(*y*) **Wooden structure.** The repealed Met. Man. and Bldg. Acts (Amend.) Act, 1882, sec. 13, made it unlawful to erect any "wooden structure or erection of a movable or temporary character" without a licence. The following were held not to come within the meaning of the section and not to require a licence:—Caravans used in making a shooting gallery and a steam roundabout (*Hall* v. *Smallpiece*, 59 L. J. M. C. 97; 54 J. P. 710); a wooden builder's office on wheels, and wheeled to any place where building operations were going on (*London Coun. Counc.* v. *Pearce* (1892), 2 Q. B. 109; 56 J. P. 790); a bungalow constructed of wood and corrugated iron, and erected on the maker's premises for the sole purpose of exhibition and sale, and not for use there. *London County Council* v. *Humphreys* (1894), 2 Q. B. 755; 63 L. J. M. C. 215.

(*z*) **Exempt from this part.** See secs. 86 and 201—206, *post*.

(*a*) **Erected by builder for his use.** This proviso is limited in its application to structures erected by a builder for his own use, and does not apply to a temporary wooden structure erected for the purpose of carrying on, during the progress of the works, the business usually carried on in the premises undergoing alteration or repair. *London County Council* v. *Candler*, 60 L. J. M. C. 114; 55 J. P. 679.

(*b*) **City; local authority.** Defined by sec. 5, sub-secs. (43) and (42), *ante*.

(*c*) **Hoardings.** For provision regulating the erection of hoardings, see the Metrop. Man. Act, 1855, secs. 121—123, and notes thereto, *ante*.

(*d*) **Store of timber.** See secs. 197 and 200 (11) (h), *post*.

(*e*) **Railway purposes.** See note to sec. 31, *ante*.

57 & 58 Vict. ch. ccxiii.

PART VIII.—RIGHTS OF BUILDING AND ADJOINING OWNERS.

Rights of owners of adjoining lands respecting erection of walls on line of junction.

87. Where lands of different owners adjoin and are unbuilt on at the line of junction and either owner (*f*) is about to build on any part of the line of junction the following provisions shall have effect :—

(1) If the building owner (*f*) desire to build a party wall (*f*) on the line of junction he may serve notice thereof on the adjoining owner (*f*) describing the intended wall :

(2) If the adjoining owner consent to the building of a party wall the wall shall be built half on the land of each of the two owners or in such other position as may be agreed between the two owners :

(3) The expense of the building of the party wall shall be from time to time defrayed by the two owners in due proportion regard being had to the use made and which may be made of the wall by the two owners respectively :

(4) If the adjoining owner do not consent to the building of a party wall the building owner shall not build the wall otherwise than as an external wall (*f*) placed wholly on his own land :

(5) If the building owner do not desire to build a party wall on the line of junction but desires to build an external wall placed wholly on his own land he may serve notice thereof on the adjoining owner (*g*) describing the intended wall :

(6) Where in either of the cases aforesaid the building owner proceeds to build an external wall on his own land he shall have a right at his own expense at any time after the expiration of one month from the service of the notice to place on the land of the adjoining owner below the level of the lowest floor the projecting footings of the external wall with concrete or other solid substructure thereunder making compensation to the adjoining owner or occupier for any damage occasioned thereby the amount of such compensation if any difference arise to be determined in the manner in which differences between building owners and adjoining owners are hereinafter directed to be determined (*h*) :

Where an external wall is built against another external wall or against a party wall it shall be lawful for the district surveyor to allow the footing of the side next such other external or party wall to be omitted.

Rights of building owner.

88. The building owner (*f*) shall have the following rights in relation to party structures (that is to say) (*i*) :—

(1) A right to make good underpin or repair any party structure (*j*) which is defective or out of repair :

(*f*) **Owner; building owner; adjoining owner; party wall; external wall.** Defined by sec. 5, sub-secs. (29), (31), (32), (16) and (15), respectively, *ante*.

(*g*) **Notice to adjoining owner.** See also sec. 93, *post*. The notice must be in writing (sec. 187, *post*) ; and may be served in the manner prescribed by sec. 188, *post*.

(*h*) **As hereinafter directed**, i.e., as directed by sec. 91, *post*.

(*i*) **Rights of building owner.** At common law an adjoining owner had the right to pull down a party wall, or to repair it, or to replace its old foundation by a new one, even without notice to the other adjoining owner. But the rights of the building owner, as defined by this section, are in substitution for those which existed at common law, and are not in addition thereto. *Standard Bank of British South America* v. *Stokes*, 9 Ch. D. 68 ; 47 L. J. Ch. 554. The rights must, therefore, be exercised in conformity with the rules contained in sec. 90, *post* ; or sec. 91, *post*, in case of difference.

For rules as to dividing or otherwise, between the building and the adjoining owners, the expenses incurred in the exercise of these right, see sec. 95, *post*.

(*j*) **Party structure; party fence wall.** Defined by sec. 5 (20) and (18), *ante*.

(2) A right to pull down and rebuild any party structure which is so far defective or out of repair as to make it necessary or desirable to pull it down:

(3) A right to pull down any timber or other partition which divides any buildings and is not conformable with the regulations of this Act and to build instead a party wall (*k*) conformable thereto:

(4) In the case of buildings having rooms or storeys the property of different owners intermixed a right to pull down such of the said rooms or storeys or any part thereof as are not built in conformity with this Act and to rebuild the same in conformity with this Act:

(5) In the case of buildings connected by arches or communications over public ways or over passages belonging to other persons a right to pull down such of the said buildings arches or communications or such parts thereof as are not built in conformity with this Act and to rebuild the same in conformity with this Act:

(6) A right to raise and underpin any party structure permitted by this Act to be raised or underpinned or any external wall (*l*) built against such party structure upon condition of making good all damage occasioned thereby to the adjoining premises or to the internal finishings and decorations thereof and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall:

(7) A right to pull down any party structure which is of insufficient strength for any building intended to be built and to rebuild the same of sufficient strength for the above purpose upon condition of making good all damage occasioned thereby to the adjoining premises or to the internal finishings and decorations thereof:

(8) A right to cut into any party structure (*m*) upon condition of making good all damage occasioned to the adjoining premises by such operation:

(9) A right to cut away any footing or any chimney breasts jambs or flues projecting or other projections from any party wall or external walls in order to erect an external wall against such party wall or for any other purpose upon condition of making good all damage occasioned to the adjoining premises by such operation:

(10) A right to cut away or take down such parts of any wall or building of an adjoining owner as may be necessary in consequence of such wall or building overhanging the ground of the building owner in order to erect an upright wall against the same on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down:

(11) A right to perform any other necessary works incident to the connexion of a party structure with the premises adjoining thereto. But the above rights shall be subject to this qualification that any building which has been erected previously to the date of the commencement of this Act shall be deemed to be conformable with the provisions of this Act if it be conformable with the provisions of the Acts

(*k*) **Party structure; party fence wall.** See note (*j*) on page 432.

(*l*) **Owner; building owner; adjoining owner; party wall; external wall.** See note (*f*) on page 432.

(*m*) **Cut into party structure.** See secs. 54 (2), (3), 60, and 77 (3), (4), (5), *ante*.

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of Parliament regulating buildings in London before the commencement of this Act (*n*):

(12) A right to raise a party fence wall or to pull the same down and rebuild it as a party wall.

Rights of adjoining owner.

89.—(1) Where a building owner proposes to exercise any of the foregoing rights with respect to party structures the adjoining owner may by notice (*o*) require the building owner to build on any such party structure such chimney copings jambs or breasts or flues or such piers or recesses or any other like works as may fairly be required for the convenience of such adjoining owner and may be specified in the notice and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required works will not be injurious to the building owner or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right (*p*).

(2) Any difference that arises between a building owner and adjoining owner in respect of the execution of any such works shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined (*q*).

Rules as to exercise of rights by building and adjoining owners.

90.—(1) A building owner (*r*) shall not except with the consent in writing of the adjoining owner and of the adjoining occupiers (*r*) or in cases where any wall or party structure (*r*) is dangerous (in which cases the provisions of part ix. of this Act shall apply) exercise any of his rights under this Act in respect of any party fence wall (*r*) unless at least one month or exercise any of his rights under this Act (*s*) in relation to any party wall or party structure other than a party fence wall unless at least two months (*t*) before doing so he has served on the adjoining owner a party wall or party structure notice (*u*) stating the nature and particulars of the proposed work and the time at which the work is proposed to be commenced.

(*n*) **Acts regulating buildings before this Act**, i.e., the Acts repealed by sec. 215, and sched. 4, *post*.

(*o*) **Notice**. This must be in writing (sec. 187, *post*), and may be served in the manner provided by sec. 188, *post*.

(*p*) **Requirements of adjoining owner**. The adjoining owner will be liable for all expenses incurred on his requisition by the building owner (sec. 100, *post*), and the building owner may, before complying with the requisition, require security for the payment of such expenses. Sec. 94, *post*.

(*q*) **As hereinafter directed**, i.e., as directed by sec. 91, *post*.

(*r*) **Building owner; adjoining owner or occupier; party wall; party structure; party fence wall**. Defined by sec. 5, sub-secs. (31), (32), and (30), (16), (20), and (18), respectively, *ante*.

(*s*) **Building owner's rights under this Act**, i.e., under secs. 87 and 88, *ante*.

(*t*) **At least . . . months before**, i.e., calendar months (Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3), exclusive of the day of serving the notice and of commencing the work. *Young* v. *Higgon*, *post*, p. 437.

(*u*) **Party structure notice; adjoining owner**. Defined by sec. 5 (32), *ante*; and see further as to the meaning of "adjoining owner" for the purpose of party structure notices, the cases cited in note to sec. 5 (29), *ante*.

In an action for trespass, it was held that notice was not required to be served under the repealed Met. Building Act, 1855, sec. 85, on the tenant from year to year of the adjoining premises where the building owner was his landlord, and that although the building owner had not given the required notice to the district surveyor, he was entitled to the protection of the Act, as against his tenant. *Wheeler* v. *Gray*, 6 C. B. (N. S.) 606; 28 L. J. C. P. 200. But it will be observed that under the present section, although the two months' notice is required to be served on the "adjoining owner" only, the consent in writing of the "adjoining occupiers" must be obtained before the building owner can exercise his rights.

The notice must be in writing, and may be served in the manner prescribed by sec. 188, *ante*.

(2) When a building owner in the exercise of any of his rights under this part of the Act lays open any part of the adjoining land or building he shall at his own expense make and maintain for a proper time a proper hoarding (*x*) and shoring or temporary construction for protection of the adjoining land or building and the security of the adjoining occupier. 57 & 58 Vict. ch. ccxiii.

(3) A building owner shall not exercise any right by this Act given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner or to the adjoining occupier.

(4) A party wall or structure notice shall not be available for the exercise of any right unless the work to which the notice relates is begun within six months after the service thereof and is prosecuted with due diligence.

(5) Within one month after (*y*) receipt of such notice the adjoining owner may serve on the building owner a notice requiring him to build on any such party structure any works to the construction of which he is hereinbefore declared to be entitled.

(6) The last-mentioned notice shall specify the works required by the adjoining owner for his convenience and shall if necessary be accompanied by explanatory plans and drawings.

(7) If either owner do not within fourteen days after (*z*) the service on him of any notice express his consent thereto he shall be considered as having dissented therefrom and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner.

Settlement of difference between building and adjoining owners.

91.—(1) In all cases not specially provided for by this Act (*a*) where a difference arises between a building owner and adjoining owner in respect of any matter arising with reference to any work to which any notice given under this part of this Act relates unless both parties concur in the appointment of one surveyor they shall each appoint a surveyor and two surveyors so appointed shall select a third surveyor (*b*) and such one surveyor or three surveyors or any two of them shall settle any matter from time to time during the continuance of any work to which the notice relates in dispute between such building and adjoining owner with power by his or their award to determine the right to do and the time and manner of doing any work and generally any other matter arising out of or incidental to such difference (*c*) but any time so appointed for doing any work shall not unless otherwise agreed commence until after the expiration

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(*x*) **Hoarding.** See the Met. Man. Act, 1855, secs. 121—123, and notes thereto, *ante*.

(*y*) **Within one month after.** See note to sec. 32, *ante*.

(*z*) **Within fourteen days after.** See note to sec. 24, *ante*.

(*a*) **Cases not specially provided for.** See sec. 94, *post*.

(*b*) **Third surveyor.** Where, under corresponding provision of the Metropolitan Building Act, 1855, sec. 85 (7), a district surveyor was appointed as umpire, the award was held to be good. *Seawell* v. *Webster*, 29 L. J. Ch. 71 ; 7 W. R. 691. And where two surveyors had been nominated under the same Act, but refused to appoint a third surveyor, the Court appointed an umpire under the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), sec. 12, which is repealed and substantially re-enacted by the Arbitration Act, 1889. *Ex parte McBryde*, 4 Ch. D. 200 ; 46 L. J. Ch. 153.

(*c*) **Settlement of difference.** Under the repealed Metropolitan Building Act, 1855, it was held that the statute did not oust the powers of the High Court to interfere in a case which was not within the provisions of the Act at all. *Sims* v. *The Estate Company*, 14 L. T. (N. S.) 55 ; 14 W. R. 419. Any difference within the Act arising between the building and adjoining owners must be settled in the manner prescribed by this section before the building owner proceeds with the work. *Standard Bank of British South America* v. *Stokes*, *ante*, p. 432.

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of the period by this part of this Act prescribed for the notice in the particular case.

(2) Any award given by such one surveyor or by such three surveyors or by any two of them shall be conclusive and shall not be questioned in any court with this exception that either of the parties to the difference may appeal therefrom to the county court (*d*) within fourteen days from (*e*) the date of the delivery of the award and the county court may subject as hereafter in this section mentioned rescind the award or modify it in such manner as it thinks just.

(3) If either party to the difference make default in appointing a surveyor for ten days after notice has been served on him by the other party to make such appointment the party giving the notice may make the appointment in the place of the party so making default.

(4) The costs incurred in making or obtaining the award shall be paid by such party as the surveyor or surveyors determine.

(5) If the appellant from any such award on appearing before the county court declare his unwillingness to have the matter decided by that court and prove to the satisfaction of the judge of that court that in the event of the matter being decided against him he will liable to pay a sum exclusive of costs exceeding fifty pounds and gives security to be approved by the judge duly to prosecute his appeal and to abide the event thereof all proceedings in the county court shall thereupon be stayed and the appellant may bring an action in the High Court against the other party to the difference.

(6) The plaintiff in such action shall deliver to the defendants an issue whereby the matters in difference between them may be tried and the form of such issue in case of dispute or in case of the non-appearance of the defendant shall be settled by the High Court and such action shall be prosecuted and issue tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of the High Court or as near thereto as circumstances admit (*f*).

(7) If the parties to any such action agree as to the facts a special case may be stated for the opinion of the High Court and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court or as near thereto as circumstances admit and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action and be payable accordingly (*g*).

(8) Where both parties to the difference have concurred in the appointment of one surveyor for the settlement of such difference then if such surveyor refuse or for seven days neglect to act or die or become incapable to act before he has made his award the matters in dispute shall be determined in the same manner as if such single surveyor had not been appointed.

(*d*) **County Court.** The expression "county court" is defined by the County Courts Act, 1888 (51 & 52 Vict. c. 43), sec. 186, to mean and include any court held under that Act, and also the City of London Court, and any judge or registrar of the Court. As to the county court in which proceedings are to be taken, see *ib.* sec. 74. As to appeal from the county court, see sec. 168, *post.*

(*e*) **Within fourteen days after.** See note to sec. 24, *ante.*

(*f*) **Issue settled by High Court.** See Rules of the Supreme Court, Order xxxiii. r. 1, and Order xxxiv. r. 9, as to the settlement and trial of issues.

(*g*) **Special case.** See Rules of the Supreme Court, Order xxxiv.

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(9) Where each party to the difference has appointed a surveyor for the settlement of the difference and a third surveyor has been selected then if such third surveyor refuse or for seven days neglect to act or before such difference is settled die or become incapable to act the two surveyors shall forthwith select another third surveyor in his place and every third surveyor so selected as last aforesaid shall have the same powers and authorities as were vested in his predecessor.

(10) Where each party to the difference has appointed a surveyor for the settlement of the difference then if the two surveyors so appointed refuse or for seven days after request of either party neglect to select a third surveyor or another third surveyor in the event of the refusal or neglect to act death or incapacity of the third surveyor for the time being a Secretary of State may on the application of either party select some fit person to act as third surveyor and every surveyor so selected shall have the same powers and authorities as if he had been selected by the two surveyors appointed by the parties.

(11) Where each party to the difference has appointed a surveyor for the settlement of the difference then if before such difference is settled either surveyor so appointed die or become incapable to act the party by whom such surveyor was appointed may appoint in writing some other surveyor to act in his place, and if for the space of seven days after notice served on him by the other party for that purpose he fail to do so the other surveyor may proceed ex parte and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of his death or disability as aforesaid.

(12) Where each party to the difference has appointed a surveyor for the settlement of the difference then if either of the surveyors refuse or for seven days neglect to act the other surveyor may proceed ex parte and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

Power for building owner to enter premises.

92. A building owner (*h*) his servants agents and workmen at all usual times of working may enter and remain on any premises for the purpose of executing and may execute any work which he has become entitled or is required in pursuance of this Act to execute removing any furniture or doing any other thing which may be necessary and if the premises are closed he and they may accompanied by a constable or other officer of the peace break open any fences or doors in order to effect such entry:

Provided that before entering on any premises for the purposes of this section the building owner shall except in the case of emergency give fourteen days' notice (*i*) of his intention so to do to the owner and occupier (*h*) and in case of emergency shall give such notice as may be reasonably practicable.

(*h*) **Building owner; owner; occupier.** Defined by sec. 5, sub-secs. (31), (29), and (30), *ante*.

(*i*) **Fourteen days' notice,** i.e., fourteen clear days, exclusive of the day of giving the notice and of the day on which the act is to be done. *Young* v. *Higgon*, 6 M. & W. 49; 9 L. J. M. C. 29; *In re Railway Sleepers Supply Co.*, 29 Ch. D. 204, *per* North, J., at p. 208; 54 L. J. Ch. 722. The notice must be in writing (sec. 187, *post*), and may be served in the manner provided by sec. 188, *post*.

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Building owner to underpin adjoining owner's building.

93. Where a building owner intends to erect within ten feet of a building belonging to an adjoining owner a building or structure any part of which within such ten feet extends to a lower level than the foundations (*k*) of the building belonging to the adjoining owner he may and if required by the adjoining owner shall (subject as hereinafter provided) (*l*) underpin or otherwise strengthen the foundations of the said building so far as may be necessary, and the following provisions shall have effect :—

(1) At least two months' notice (*m*) in writing shall be given by the building owner to the adjoining owner stating his intention to build and whether he proposes to underpin or otherwise strengthen the foundations of the said building and such notice shall be accompanied by a plan and sections showing the site of the proposed building and the depth to which he proposes to excavate :

(2) If the adjoining owner shall within fourteen days after (*n*) being served with such notice give a counter notice in writing that he disputes the necessity of or require such underpinning or strengthening a difference shall be deemed to have arisen between the building owner and the adjoining owner (*o*) :

(3) The building owner shall be liable to compensate the adjoining owner and occupier for any inconvenience loss or damage which may result to them by reason of the exercise of the powers conferred by this section :

(4) Nothing in this section contained shall relieve the building owner from any liability to which he would otherwise be subject in case of injury caused by his building operations to the adjoining owner (*p*).

Security to be given by building owner and adjoining owner.

94. An adjoining owner (*q*) may if he think fit by notice (*r*) in writing require the building owner (*q*) (before commencing any work which he may be authorised by this part of this Act to execute) to give such security as may be agreed upon or in case of difference may be settled by the judge of the county court (*s*) for the payment of all such expenses, costs, and compensation in respect of the work as may be payable by the building owner (*t*).

The building owner may if he think fit at any time after service on him of a party wall or party structure requisition by the adjoining owner and before beginning a work to which the requisition relates but not afterwards serve a counter requisition on the adjoining owner requiring him to give such security for payment of the expenses costs and compensation for

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(*k*) **Foundations.** Defined by sec. 5, *ante*.

(*l*) **As hereinafter provided,** i.e., subject to the liability of the adjoining owner for all expenses incurred on his requisition. Secs. 94 and 100, *post*.

(*m*) **At least two months' notice,** i.e., calendar months (Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3), exclusive of the day of giving the notice and of the day of commencing to build. *Young* v. *Higgon*, *supra*. The notice may be served in the manner provided by sec. 188, *post*.

(*n*) **Within fourteen days after.** See note to sec. 24, *ante*.

(*o*) **Difference between building and adjoining owner.** See sec. 91, *ante*.

(*p*) **Building owner's liability.** See note to sec. 95 (b), *post*.

(*q*) **Adjoining owner; building owner.** Defined by sec. 5, sub-secs. (32) and (31), *ante*.

(*r*) **Notice.** See sec. 188, *post*, as to the mode of service.

(*s*) **County Court.** See note to sec. 91 (2), *ante*.

(*t*) **Costs, &c., payable by building owner.** See sec. 93 (3), *supra*, and sec. 95, *post*.

which he is or will be liable (*u*) as may be agreed upon or in case of difference may be settled as aforesaid. 57 & 58 Vict. ch. ccxiii.

If the adjoining owner do not within one month after (*x*) service of that counter requisition give security accordingly he shall at the end of that month be deemed to have ceased to be entitled to compliance with his party wall or party structure requisition and the building owner may proceed as if no party wall or party structure requisition had been served on him by the adjoining owner.

Rules as to expenses in respect of party structures.

95.—(1) As to expenses to be borne jointly by the building owner and adjoining owner (*y*):—

(a) If any party structure (*y*) be defective or out of repair the expense of making good underpinning or repairing the same shall be borne by the building owner and adjoining owner in due proportion regard being had to the use that each owner makes or may make of the structure;

(b) If any party structure be pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull it down the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion regard being had to the use that each owner may make of the structure (*z*);

(c) If any timber or other partition dividing a building be pulled down in exercise of the right by this part of this Act vested in a building owner and a party structure be built instead thereof the expense of building such party structure and also of building any additional party structures that may be required by reason of the partition having been pulled down shall be borne by the building owner and adjoining owner in due proportion regard being had to the use that each owner may make of the party structure and to the thickness required for support of the respective buildings parted thereby;

(d) If any rooms or storeys or any parts thereof the property of different owners and intermixed in any building be pulled down in pursuance of the right by this part of this Act vested in a building owner and be rebuilt in conformity with this Act the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion regard being had to the use that each owner may make of such rooms or storeys;

(*u*) **Costs payable by adjoining owner.** See secs. 95 and 100, *post*.

(*x*) **Within one month after.** See note to sec. 32, *ante*.

(*y*) **Building owner; adjoining owner; party structure.** Defined by sec. 5, subsecs. (31), (32), and (20), respectively, *ante*.

(*z*) **Expense of rebuilding defective party structure.** Under the Act of 1774 (14 Geo. 3, c. 78), s. 41, dealing with buildings in London, where a person had pulled down a party wall thereby destroying the internal decorations of the adjoining house, and had rebuilt the wall without replacing the decorations, it was held that the remedy, if any, was not by *mandamus*, but by action. *Reg.* v. *Ponsford*, 1 D. & L. 116; 12 L. J. Q. B. 313.

Under the corresponding provisions of the repealed Met. Bldg. Act, 1855, secs. 83 and 88, it was held that a building owner who pulled down and rebuilt a defective party structure was not liable to make good damage to a part of the adjoining owners' house not forming part of the party structure, where such damage was the necessary consequence of the execution of the work. *Bryer* v. *Willis*, 23 L. T. (N. S.) 463; 35 J. P. 471. A building owner is, however, liable for damage to the adjoining premises arising from the negligence of the builder employed. See *Dalton* v. *Angus*, 6 App. Cas. 740; 50 L. J. Q. B. 689; *Lemaitre* v. *Davis*, 29 Ch. D. 281; 51 L. J. Ch. 173; *Hughes* v. *Percival*, 8 App. Cas. 443; 52 L. J. Q. B. 719.

Sec. 200 (5), *post*, imposes a penalty on every building owner who fails within a reasonable time to make good any damage which he is liable to make good under this part of the Act.

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(e) If any arches or communications over public ways or over passages belonging to other persons than the owners of the buildings connected by such arches or communications or any parts thereof be pulled down in pursuance of the right by this part of this Act vested in a building owner and be rebuilt in conformity with this Act the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner may make of such arches or communications.

(2) As to expenses to be borne by the building owner :—

(a) If any party structure or any external wall (*a*) built against another external wall be raised or underpinned in pursuance of the power by this part of this Act vested in a building owner the expense of raising or underpinning the same and of making good all damage occasioned thereby and of carrying up to the requisite height all such flues and chimney-stacks belonging to the adjoining owner on or against any such party structure or external wall as are by this part of this Act required to be made good and carried up shall be borne by the building owner ;

(b) If any party structure which is of proper materials and sound or not so far defective or out of repair as to make it necessary or desirable to pull it down be pulled down and rebuilt by the building owner the expense of pulling down and rebuilding the same and of making good any damage by this part of this Act required to be made good and a fair allowance in respect of the disturbance and inconvenience caused to the adjoining owner shall be borne by the building owner ;

(c) If any party structure be cut into by the building owner the expense of cutting into the same and of making good any damage by this part of this Act required to be made good shall be borne by such building owner ;

(d) If any footing chimney breast jambs or floor be cut away in pursuance of the powers by this part of this Act vested in a building owner the expense of such cutting away and of making good any damage by this part of this Act required to be made good shall be borne by the building owner ;

(e) If any party fence wall (*a*) be raised for a building the expense of raising such wall shall be borne by the building owner ;

(f) If any party fence wall be pulled down and built as a party wall the expense of pulling down such party fence wall and building the same as a party wall shall be borne by the building owner.

If at any time the adjoining owner make use of any party structure or external wall (or any part thereof) raised or underpinned as aforesaid or of any party fence wall pulled down and built as a party wall (or any part thereof) beyond the use thereof made by him before the alteration there shall be borne by the adjoining owner from time to time a due proportion of the expenses (having regard to the use that the adjoining owner may make thereof) :—

(i) Of raising or underpinning such party structure or external wall and of making good all such damage occasioned thereby to the adjoining owner and of carrying up to the requisite height all such flues and

(*a*) **External wall ; party fence wall ; party wall.** Defined by sec. 5, sub-secs. (15), (18), and (16), respectively, *ante*.

chimney-stacks belonging to the adjoining owner on or against any such party structure or external wall as are by this part of this Act required to be made good and carried up; 57 & 58 Vict. ch. ccxiii.

(ii) Of pulling down and building such party fence wall as a party wall (*b*).

Account of expenses to be delivered to adjoining owner.

96. Within one month after (*c*) the completion of any work which a building owner is by this part of this Act authorised or required to execute and the expense of which is in whole or in part to be borne by an adjoining owner (*d*) the building owner shall deliver to the adjoining owner an account in writing of the particulars and expense of the work specifying any deduction to which such adjoining owner or other person may be entitled in respect of old materials or in other respects and every such work shall be estimated and valued at fair average rates and prices according to the nature of the work and the locality and the market price of materials and labour at the time.

Adjoining owner may object to account.

97. At any time within one month after (*c*) the delivery of the said account the adjoining owner if dissatisfied therewith may declare his dissatisfaction to the building owner by notice in writing (*e*) served by himself or his agent and specifying his objection thereto and thereupon a difference shall be deemed to have arisen between the parties and shall be determined in manner hereinbefore in this part of this Act provided for the settlement of differences between building and adjoining owners (*f*).

Building owner may recover if no appeal made.

98. If within the said period of one month the adjoining owner do not declare in the said manner his dissatisfaction with the account he shall be deemed to have accepted the same and shall pay the same on demand to the party delivering the account and if he fail to do so the amount so due may be recovered as a debt (*g*).

Structure to belong to building owner until contribution paid.

99. Where the adjoining owner is liable to contribute to the expenses of building any party structure (*h*) then until such contribution is paid the building owner at whose expense the same was built shall stand possessed of the sole property in the structure.

Adjoining owner liable to expenses incurred on his requisition.

100. The adjoining owner shall be liable for all expenses incurred on his requisition (*i*) by the building owner and in default payment of the same may be recovered from him as a debt.

Saving for lights in party walls, &c.

101. Nothing in this Act shall authorise any interference with an easement of light (*k*) or other easements (*l*) in or relating to a party wall or

(*b*) **External wall; party fence wall; party wall.** See note (*a*) on page 440.

(*c*) **Within one month after.** See note to sec. 32, *ante*.

(*d*) **Expenses payable by adjoining owner.** See sec. 95, *ante*, and sec. 100, *post*.

(*e*) **Notice.** This may be served in the manner provided by sec. 188, *post*.

(*f*) **Manner hereinbefore provided**, i.e., by sec. 91, *ante*.

(*g*) **Recovered as a debt.** Presumably this means that the amount can be recovered by action in the county court, where it does not exceed 50*l*., and in the High Court where it exceeds that sum; and cannot be recovered summarily under sec. 166, *post*.

(*h*) **Adjoining owner liable to contribute.** See sec. 95, *ante*.

(*i*) **Requisition of adjoining owner.** See secs. 89, 90 (5), and 93 (2), *ante*.

(*k*) **Easement of light.** The right to the access and use of light to and for any dwelling-house, workshop, or other building is absolute and indefeasible after twenty years' uninterrupted enjoyment. Prescription Act, 1832 (2 & 3 Will. 4, c. 71), sec. 3. An easement of light may also be acquired by grant, express or implied. See *Beddington* v. *Atlee*, 35 Ch. D. 317; 56 L. J. Ch. 655, where the subject is discussed at length in the judgment of Chitty, J.

(*l*) **Other easements.** As to an easement of support for buildings, see *Dalton* v. *Angus*, 6 App. Cas. 740; 50 L. J. Q. B. 689. It may be acquired by twenty years' uninterrupted enjoyment. *Ib.*

57 & 58 Vict. ch. ccxiii.

take away abridge or prejudicially affect any right of any person to preserve or restore any light or other thing in or connected with a party wall in case of the party wall being pulled down or rebuilt.

PART IX. (*m*)—DANGEROUS AND NEGLECTED STRUCTURES.

Dangerous Structures.

Meaning of structure.

102. In this part of this Act the expression "structure" includes any building wall or other structure and anything affixed to or projecting from any building wall or other structure.

Survey to be made of dangerous structures.

103.—(1) Where it is made known to the council that any structure is in a dangerous state (*n*) the council shall require a survey of such structure to be made (*o*) by the district surveyor or by some other competent surveyor.

(2) For the purposes of this part of this Act the expression "district surveyor" shall be deemed to include any surveyor so appointed.

(3) The district surveyor shall make known to the council any information which he may receive with respect to any structure being in a dangerous state.

(4) It shall be lawful for the district surveyor to enter into any structure or upon any land upon which any structure is situate for the purpose of making a survey of such structure.

Effect of this part of Act within the City.

104. In cases where any structure is situate within the City (*p*) this part of this Act relating to dangerous structures shall be read as if the commissioners of sewers were named therein instead of the council, and all costs and expenses of and all payments hereby directed to be made by or to such commissioners shall be made by or to the chamberlain of the City out of or to the consolidated rate made by such commissioners in the same manner as payments are made by or to such chamberlain in the ordinary course of his business.

Surveyor to give certificate.

105. Upon the completion of his survey the district surveyor employed shall certify to the council his opinion as to the state of the structure.

Notice to be given to owner in respect of certificate.

106. If the certificate is to the effect that the structure is not in a dangerous state no further proceedings shall be had in respect thereof but if it is to the effect that the same is in a dangerous state the council may cause the same to be shored up or otherwise secured and a proper board or fence to be put up for the protection of passengers and shall cause notice

(*m*) **Part IX.** Government buildings and the buildings of the Inns of Court are exempted from the operation of this part by secs. 202 and 204, *post*.

(*n*) **Structure in a dangerous state.** These provisions apply to a structure in a dangerous state, even though it is not adjacent to a highway, and consequently is not dangerous to the public. *London County Council* v. *Herring* (1894), 2 Q. B. 522; 63 L. J. M. C. 230.

As to premises which are in such a state as to be a nuisance or injurious or dangerous to health, see the Pub. Hlth. (London) Act, 1891, sec. 2 (1) (a), *ante*.

(*o*) **Council shall require survey.** The duties of the County Council in relation to dangerous structures under secs. 103 and 106 are purely ministerial, and may be delegated to their superintending architect; and an unrescinded resolution of the Met. Bd. Wks., delegating to the superintending architect the exercise of their authority in these matters under the Acts then in force is sufficient for that purpose. *Lond. Coun. Counc.* v. *Hobbis*, 75 L. T. (N. S.) 687; 61 J. P. 85.

(*p*) **The City** is defined by sec. 5 (43), *ante*.

to be served on the owner or occupier (*q*) of the structure requiring him forthwith to take down secure or repair the same as the case requires. 57 & 58 Vict. ch. ccxiii.

Proceedings to enforce compliance with notice

107.—(1) If the owner or occupier on whom the notice is served fail to comply as speedily as the nature of the case permits with the notice a petty sessional court (*r*) on complaint (*s*) by the council may order the owner to take down repair or otherwise secure to the satisfaction of the district surveyor (*t*) the structure or such part thereof as appears to the court to be in a dangerous state within a time to be fixed by the order and if the same be not taken down repaired or otherwise secured within the time so limited the council may with all convenient speed cause all or so much of the structure as is in a dangerous condition to be taken down repaired or otherwise secured in such manner as may be requisite:

Provided that if the owner of the structure dispute the necessity of any of the requisitions comprised in the notice he may by notice in writing to the council within seven days from (*u*) the service of the notice upon himself require that the subject shall be referred to arbitration.

(2) In case the owner require arbitration he may at the time of giving such notice appoint an independent surveyor to report on the condition of the structure in conjunction with the district surveyor (*t*) within seven days of (*u*) the receipt by the council of the notice of appointment of the owner's surveyor and all questions of fact or matters in dispute which cannot be agreed between the owner's surveyor and the district surveyor shall be referred for final decision to a third surveyor who shall (before the owner's surveyor and the district surveyor enter upon the discussion of the question in dispute) have been appointed to act as arbitrator by such two surveyors or in the event of their disagreeing by a petty sessional court on the application of either of them:

Such arbitrator shall make his award within fourteen days.

(3) The notice served by the council shall be discharged amended or confirmed in accordance with the decision of the two surveyors or the arbitrator as the case may be.

(4) Unless the arbitrator otherwise direct the costs of and incident to the determination by the two surveyors or the arbitrator of the question in dispute shall be borne and paid in the event of such determination being adverse to the contention of the district surveyor by the council or in the event of such determination being adverse to the contention of the owner's surveyor by the owner (*x*).

Court may make order notwithstanding arbitration.

108. Notwithstanding any such notice requiring arbitration as aforesaid a petty sessional court (*r*) on complaint by the council may if of opinion that the structure is in such a dangerous condition (*y*) as to require immediate treatment make any order which such court may think fit with respect to the taking down repairing or otherwise securing the structure.

(*q*) **Owner; occupier.** Defined by sec. 5, sub-secs. (29) and (30), *ante*.

(*r*) **Petty sessional court.** See note to sec. 83, *ante*.

(*s*) **Complaint.** The complaint must be made within six calendar months from the time when the matter of such complaint arises. Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 11.

(*t*) **District surveyor.** See sec. 103 (2).

(*u*) **Within . . . days.** See note to sec. 24, *ante*.

(*x*) **Costs.** As to the payment and recovery of costs incurred by the County Council, see secs. 109—112, *post*. If the arbitrator's award is adverse to the Council, the owner may recover his costs summarily. Sec. 166, *post*.

(*y*) **Structure in dangerous condition.** See note to sec. 103, *ante*.

57 & 58 Vict. ch. ccxiii.

Expenses.

109.—(1) All expenses incurred by the council in relation to the obtaining of any order as to a dangerous structure and carrying the same into effect under this part of this Act shall be paid by the owner (*z*) of the structure but without prejudice to his right to recover the same from any person liable to the expenses of repairs (*a*).

(2) If the owner cannot be found or if on demand he refuse or neglect to pay the said expenses the council after serving on him three months' notice (*b*) of their intention to do so may if in their discretion they think fit sell the structure but they shall after deducting from the proceeds of the sale the amount of all expenses incurred by them pay the surplus (if any) to the owner on demand (*c*).

Provisions respecting sale of dangerous structures.

110. Where under this part of this Act any dangerous structure is sold for payment of the expenses incurred in respect thereof by the council the purchaser his agents and servants may enter upon the land whereon the structure is standing for the purpose of taking down the same and of removing the materials of which it is constructed (*d*).

If proceeds insufficient land not to be built on till balance paid.

111. Where the proceeds of the sale of any such structure are insufficient to repay to the council the amount of the expenses incurred by them in respect of such structure no part of the land whereon the structure stands or stood shall be built upon until after the balance due to the council in respect of the structure has been paid (*e*).

Recovery of expenses.

112. If the materials are not sold by the council or if the proceeds of the sale are insufficient to defray the said expenses the council may recover the expenses or the balance thereof from the owner (*f*) of the building together with all costs in respect thereof in a summary manner (*g*).

Fees to surveyor.

113.—(1) There shall be paid to the district surveyor (*h*) in respect of his services under this part of this Act in relation to any dangerous structures the fees specified in part ii. of the third schedule to this Act.

(2) Provided that if any special service is required to be performed by the district surveyor under this part of this Act for which no fee is specified in the said schedule the council may order such fee to be paid for that service as they think fit.

(3) All fees paid to any surveyor by virtue of this section shall be deemed to be expenses incurred by the council in the matter of the dangerous structure in respect of which such fees are paid and shall be recoverable by them from the owner accordingly.

Power to remove inmates from dangerous structure.

114. Where a structure has been certified by a district surveyor (*h*) to

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(*z*) **Owner** is defined by sec. 5 (29), *ante*.

(*a*) **Person liable to expenses of repairs.** See sec. 173, *post*. See also the cases cited in note to sec. 96 of the Met. Man. Amend. Act, 1862, *ante*, as to covenants between landlord and tenant.

(*b*) **Notice.** This must be in writing, duly authenticated (sec. 187, *post*), and may be served in the manner provided by sec. 188, *post*.

(*c*) **Surplus.** Where such surplus is not demanded by any person entitled thereto within one year, the amount is to be paid into Court. Sec. 172, *post*.

(*d*) **Purchaser may enter.** A penalty for obstructing any person entitled to enter under this section is imposed by sec. 200 (4), *post*.

(*e*) **Land not to be built upon.** See also sec. 116, *post*.

(*f*) **Recover from owner,** i.e., in the first instance, the owner immediately entitled in possession, or the occupier. Sec. 173, *post*.

(*g*) **Summary manner.** See sec. 166, *post*.

(*h*) **District surveyor.** See sec. 103 (2), *ante*.

be dangerous to its inmates (*i*) a petty sessional court (*k*) may, if satisfied of the correctness of the certificate upon the application of the council by order direct that any inmates of such structure be removed therefrom by a constable or other peace officer and if they have no other abode he may require that they be received into the workhouse for the place in which the structure is situate. 57 & 58 Vict. ch. ccxiii.

Neglected Structures.

Removal of dilapidated and neglected buildings.

115.—(1) Where a structure (*l*) is ruinous or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in or the inhabitants of the neighbourhood a petty sessional court (*k*) on complaint by the council may order the owner (*m*) to take down or repair or rebuild such structure (in this Act referred to as a neglected structure) or any part thereof or to fence in the ground upon which it stands or any part thereof or otherwise to put the same or any part thereof into a state of repair and good condition to the satisfaction of the council within a reasonable time to be fixed by the order and may also make an order for the costs incurred up to the time of the hearing.

(2) If the order is not obeyed the council may with all convenient speed enter upon the neglected structure or such ground as aforesaid and execute the order.

(3) Where the order directs the taking down of a neglected structure or any part thereof the council in executing the order may remove the materials to a convenient place and (unless the expenses of the council under this section in relation to such structure are paid to them within fourteen days after (*n*) such removal) sell the same if and as they in their discretion think fit.

(4) All expenses incurred by the council under this section in relation to a neglected structure may be deducted by the council out of the proceeds of the sale and the surplus (if any) shall be paid by the council on demand (*o*) to the owner of the structure and if such neglected structure or some part thereof is not taken down and such materials are not sold by the council or if the proceeds of the sale are insufficient to defray the said expenses the council may recover such expenses or such insufficiency from the owner (*p*) of the structure together with all costs in respect thereof in a summary manner (*q*) but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs (*r*).

Supplemental as to Dangerous and Neglected Structures.

Provision for enforcing repayment of expenses incurred by council.

116.—(1) Where the council have incurred any expenses in respect of any dangerous or neglected structure and have not been paid or have not

(*i*) **Inmates.** Temporary occupiers of a night shelter are "inmates" for the purposes of the Pub. Hlth. (London) Act, 1891, sec. 2 (1) (e). *Reg.* v. *Slade*, *Ex parte Robinson*, *ante*, p. 279.

(*k*) **Petty sessional court.** See note to sec. 83, *ante*.

(*l*) **Structure.** See sec. 102, *ante*, for the meaning of this expression.

(*m*) **Owner** is defined by sec. 5 (29), *ante*.

(*n*) **Within . . . days after.** See note to sec. 24, *ante*.

(*o*) **Surplus to be paid on demand.** See note to sec. 109 (2), *ante*.

(*p*) **Recover expenses from owner,** i.e., in the first instance from the owner immediately entitled in possession or the occupier. Sec. 173, *post*.

(*q*) **Summary manner.** See sec. 166, *post*.

(*r*) **Person liable to expenses of repairs.** See note to sec. 109 (1), *ante*.

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recovered the same a petty sessional court (*s*) on complaint by the council may make an order fixing the amount of such expenses and the costs of the proceedings before such petty sessional court and directing that no part of the land upon which such dangerous or neglected structure stands or stood shall be built upon or that no part of such dangerous or neglected structure if repaired or rebuilt shall be let for occupation until after payment to the council of the said amount and thereupon and until payment to the council of the said amount no part of such land shall be built upon and no part of such dangerous or neglected structure so repaired or rebuilt shall be let for occupation.

(2) Every such order shall be made in duplicate and one copy of such order shall be retained by the proper officer of the court and the other copy shall be kept at the county hall (*t*).

(3) The council shall keep at the county hall a register of all orders made under this section, and shall keep the same open for inspection by all persons at all reasonable times, and any such order not entered in such register within ten days after (*u*) the making thereof shall cease to be of any force No property shall be affected by any such order unless and until such order is entered in such register.

Fees on dangerous or neglected structures to council.

117. The fees specified in part iv. of the third schedule to this Act as payable to the council shall be payable to and may be recovered in a summary way by the council.

PART X.—DANGEROUS AND NOXIOUS BUSINESSES (*x*).

Regulations for building near dangerous business.

118.—(1) No person shall erect any building nearer than fifty feet (*y*) to a building used for any dangerous business to which this section applies.

(2) Provided that where a building erected before the ninth day of August one thousand eight hundred and forty-four within fifty feet from any building for the time being used for any such dangerous business is pulled down burnt or destroyed by tempest such building may be rebuilt.

(3) No person shall establish or carry on a dangerous business to which this section applies in any building or vault or in the open air at a less distance (*y*) than forty feet from any public way or than fifty feet from any other building or any vacant ground belonging to any person other than his landlord.

(4) The following businesses shall be deemed to be dangerous businesses (*z*) within the meaning of this section (that is to say) : The business of the manufacture of matches ignitable by friction or otherwise or of other substances liable to sudden explosion inflammation or ignition or of turpentine naphtha varnish tar resin or Brunswick black and any other

(*s*) **Petty sessional court.** See note to sec. 83, *ante*.

(*t*) **County hall.** See note to sec. 42 (1), *ante*.

(*u*) **Within . . . days after.** See note to sec. 24, *ante*.

(*x*) **Noxious businesses.** See also the Pub. Hlth. (London) Act, 1891, secs. 19—22, *ante*, and cases cited thereunder.

(*y*) **Distance.** To be measured in a straight line on a horizontal plane. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 34.

(*z*) **Dangerous businesses.** The manufacturing, keeping, selling, carrying, and importing of gunpowder, nitro-glycerine, and other explosive substances is regulated by the Explosives Act, 1875, *post*, vol. ii.

manufacture dangerous on account of the liability of the materials or substances employed therein to cause sudden fire or explosion. 57 & 58 Vict. ch. ccxiii.

Regulations for building near noxious business.

119.—(1) No person shall erect any dwelling-house (*a*) nearer than fifty feet (*b*) to a building used for any noxious business to which this section applies.

(2) Provided that where a dwelling-house erected before the ninth day of August one thousand eight hundred and forty-four within fifty feet from any building for the time being used for any such noxious business is pulled down burnt or destroyed by tempest such dwelling-house may be rebuilt.

(3) Subject to the provisions of the next following section no person shall establish or carry on a noxious business to which this section applies in any building or vault or in the open air at a less distance than forty feet from any public way or than fifty feet from any dwelling-house.

(4) The following businesses shall be deemed to be noxious businesses within the meaning of this section (that is to say): The business of a blood boiler or bone boiler (*c*) and any other like business which is offensive or noxious (*d*) but nothing in this section shall apply to any of the following businesses namely: the businesses of a soap boiler tallow melter knacker fellmonger tripe boiler and slaughterer of cattle or horses (*c*).

Provisions as to certain old noxious businesses.

120. The following provisions shall apply to any noxious business existing before the ninth day of August one thousand eight hundred and forty-four:—

(1) If any party charged with carrying on such business show that in carrying on such business all the means known to be available for mitigating the effect of such business have been adopted, then it shall be lawful for the petty sessional court (*e*) to remit or mitigate the penalty (*f*) Provided further that if it shall appear to the said court or to the court of quarter sessions whether on appeal or on trial by jury as hereinafter provided that the person carrying on any such business shall have made due endeavours to carry on the same with a view to mitigate so far as possible the effects of such business then although he have not adopted all or the best means available for the purpose yet it shall be lawful for the court to suspend the execution of their order upon condition that within a reasonable time to be named the party convicted do adopt such other or better means as to the court shall seem fit or before passing final sentence and without consulting the prosecutor to make such other order touching the carrying on of such business as the court shall think fit for preventing the nuisance in future Provided always that if the matter come before any superior court it shall be lawful for such court to exercise such power of mitigating or remitting such penalty or of suspending the execution of any judgment order or

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(*a*) **Dwelling-house** is defined by sec. 5 (25), *ante*.
(*b*) **Distance.** See note (*y*) on page 446.
(*c*) **Noxious businesses.** See note (*x*) on page 446.
(*d*) **Other offensive or noxious business.** See *Withington Loc. Bd.* v. *Manchester Corporation*, *ante*, p. 290.
(*e*) **Petty sessional court.** See note to sec. 83, *ante*.
(*f*) **Penalty imposed by this Act.** See sec. 200 (8), *post*.

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determination in the matter or to make such order touching the carrying on of such business as to the court shall seem fit:

(2) Any person dissatisfied with the decision of the petty sessional court may appeal to the court of quarter sessions in manner provided by the Summary Jurisdiction Acts (*g*):

(3) If before conviction by the petty sessional court the person complained against desire to have the matter tried by a jury and enter into a recognizance to try such matter without delay and to pay all costs of trial if a verdict be found against him then such matter shall be tried at the next practicable court of quarter sessions or whensoever that court shall appoint and if that court shall think fit it shall be lawful for them to authorise the jury to view the place in question in such manner as they shall direct and the jury shall inquire and try and determine by their verdict whether the business in question be offensive or noxious and whether the party in question have done any act whereby the penalty imposed by this Act in respect thereof (*h*) has been incurred and subject to the power hereinbefore conferred of mitigating such penalty or suspending their judgment order or determination thereon or making such order touching the carrying on of the business the said court shall give judgment according to such verdict and shall award the penalty (if any) incurred by the defendant and shall and may (if they see fit) award to either of the parties such costs as they may deem reasonable which verdict and the judgment award order or determination thereon shall be binding and conclusive.

Saving for gasworks and distilleries.

121. The provisions of this part of this Act relating to dangerous and noxious businesses shall not apply to any public gasworks (*i*) nor to any premises used for the purpose of distillation or the rectification of spirits under the survey of the Commissioners of Inland Revenue or their officers (*k*).

PART XI.—DWELLING-HOUSES ON LOW-LYING LAND.

Dwelling-houses on low-lying land.

122. It shall not be lawful for any person upon land of which the surface is below the level of Trinity high-water mark (*l*) and which is so situate as not to admit of being drained by gravitation into an existing sewer of the council to erect any building to be used wholly or in part as a dwelling-house (*m*) or to adapt any building to be used wholly or in part as a dwelling-house except with the permission of the council and subject to and in accordance with such regulations as the council may from time to time prescribe with reference to the erection of buildings on such land (*n*):

(*g*) **Appeal to quarter sessions.** As to the time and manner of appealing, see note to sec. 227 of the Met. Man. Act, 1855, *ante*.

(*h*) **Penalty imposed by this Act.** See sec. 200 (8), *post*.

(*i*) **Gasworks.** See also sec. 205, *post*.

(*k*) **Distillation of spirits.** For the law relating to the manufacture and sale of spirits, see the Spirits Act, 1880 (43 & 44 Vict. c. 24).

(*l*) **Trinity high-water mark.** For the meaning of this expression, see note to sec. 41 of the West Middlesex Water Act, 1852, *post*, vol. ii. tit. "*Water*."

(*m*) **Dwelling-house.** Defined by sec. 5 (25), *ante*.

(*n*) **Regulations.** The regulations of the County Council as to the erection of dwelling-houses or the adaptation of buildings for use as dwelling-houses on low-lying lands were published in the *London Gazette* of April 12th, 1895, p. 2202, and are also published with the Council's Standing Orders.

And the council may by such regulations (subject to appeal as hereinafter provided)— 57 & 58 Vict. ch. ccxiii.

(i) Prohibit the erection of dwelling-houses or the adaptation of any buildings for use as dwelling-houses on such land or any defined area or areas of such land ;

(ii) Regulate the erection of dwelling-houses or the adaptation of buildings for use as dwelling-houses on such land or any defined area or areas of such land ;

(iii) Prescribe the level at which the under side of the lowest floor of any permitted building shall be placed on such land or any defined area or areas of such land and as to the provision to be made and maintained by the owner for securing efficient and proper drainage of the buildings either directly or by means of a local sewer into a main sewer of the council :

Any person seeking to erect any dwelling-house or any building any part of which is to be used as a dwelling-house or to adapt any building or any part of a building for use as a dwelling-house on any of such land shall make application to the council for a licence to erect the same and the matter shall thereupon be referred to the chief engineer of the council who shall decide whether and if so upon what conditions such erection or adaptation may be permitted and any such decision shall be given by the said engineer by a certificate in writing under his hand. Any person objecting to the refusal of the council to permit on such land or any defined area or areas of such land the erection of any dwelling-house or the adaptation for use as a dwelling-house of any building or to any regulation made by the council under this part of this Act or to any decision of the said engineer or as to the reasonableness of any requirement or condition made by him may appeal to the tribunal of appeal (*o*).

Power to make regulations.

123. The council may with the concurrence of the tribunal of appeal from time to time make regulations prescribing the procedure to be followed by persons making applications under this part of this Act (*p*).

Publication and copies of regulations.

124.—(1) Regulations made by the council under this part of this Act shall have no force until a copy thereof shall have been published in the London Gazette and it shall be the duty of the council to give notice of every such regulation by publishing a copy thereof in two or more London daily newspapers and if there be a local newspaper circulating in the parish or district to which such regulation applies then also in such local newspaper.

(2) Printed copies of every regulation from time to time in force under this part of this Act shall be kept at the county hall (*q*), and shall be supplied free of charge to any person concerned who may apply for the same.

Part XII.—Sky Signs.

"Sky signs."

125. In this part of this Act the expression—

"Sky sign" means any word letter model sign device or representation

(*o*) **Tribunal of appeal.** See secs. 175—186, *post*.

(*p*) **Regulations as to applications,** i.e., applications to the County Council, and not appeals to the tribunal of appeal, as to which see sec. 184, *post*. Regulations under this section are included in the regulations referred to in note to sec. 122, *supra*.

(*q*) **County hall.** See note to sec. 42 (1), *ante*.

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in the nature of an advertisement (*r*) announcement or direction supported on or attached to any post pole standard framework or other support wholly or in part upon over or above any building or structure (*s*) which or any part of which sky sign shall be visible against the sky from any point in any street or public way and includes all and every part of any such post pole standard framework or other support. The expression "sky sign" shall also include any balloon parachute or similar device employed wholly or in part for the purposes of any advertisement or announcement on over or above any building structure or erection of any kind or on or over any street or public way but shall not be deemed to include—

(i) Any flagstaff pole vane or weathercock unless adapted or used wholly or in part for the purposes of any advertisement or announcement;

(ii) Any sign on any board frame or other contrivance securely fixed to or on the top of the wall or parapet of any building on the cornice or blocking course of any wall or to the ridge of a roof provided that such board frame or other contrivance be of one continuous face and not open work and do not extend in height more than three feet above any part of the wall or parapet or ridge to against or on which it is fixed or supported; or

(iii) Any such word letter model sign device or representation as aforesaid which relates exclusively to the business of a railway company and which is placed or may be placed wholly upon or over any railway railway station yard platform or station approach or premises belonging to a railway company and which is also so placed that it could not fall into any street or public place.

District surveyor to Act for purposes of this part of Act.

126. For the purpose of giving effect to the provisions of this part of this Act the district surveyor of each district acting under this Act shall inspect and survey sky signs in his district and report from time to time to the council (*t*).

The expression "the surveyor" in this part of this Act means the district surveyor (*u*) so acting within his district.

Prohibition of future sky signs.

127. From and after the commencement of this Act it shall be unlawful to erect any sky sign as defined in this Act.

Regulation of existing sky sign.

128. From and after the commencement of this Act it shall be unlawful to retain any sky sign as defined in this Act which previously

(*r*) **In the nature of an advertisement.** It is immaterial whether the structure be wholly or only in part erected or used for the purposes of advertisement. *London County Council* v. *Carwardine*, 62 L. J. M. C. 40; 57 J. P. 181. The fan tails of a windmill, with the owner's name and business painted on them, are a sky sign within the Act (*ib.*), as is also a fence consisting of letters around the gallery of an open tower, and visible against the sky. *Ib.*

(*s*) **Upon, over or above any building.** A structure composed of boards, to which were attached embossed letters, was fixed on the roof and attached to the chimney of a building by iron supports, and was visible against the sky. *Held*, that the structure was a sky sign, fixed "upon, over or above" a building. *London County Council* v. *Savoy Hotel Co.*, 60 J. P. 457; 12 T. L. R. 468. See also *Tussaud* v. *London County Council*, 57 J. P. 184; 9 T. L. R. 64, decided under the words "fixed wholly or in part *over* a house or building" in the repealed Sky Signs Act, 1891 (54 & 55 Vict. ch. lxxviii.), sec. 2.

(*t*) **Report to the Council.** In the City the report is to be made to the Commissioners of Sewers. Sec. 135, *post*.

(*u*) **District surveyor** is defined by sec. 5 (35), *ante*.

to the passing of this Act shall have been erected except in pursuance of and in accordance with the terms of a licence granted or renewed before the passing of this Act by the council or by the commissioners of sewers as the case may be under the provisions of the London Sky Signs Act 1891 as amended by section 17 of the London County Council (General Powers) Act 1893 (*x*) or renewed after the passing of this Act as hereinafter provided. 57 & 58 Vict. ch. ccxiii.

Renewal of licence.

129.—(1) A licence granted under the provisions of the London Sky Signs Act 1891 and renewed under the same Act may on the expiration of the period for which such renewal was granted be renewed for one further period of two years but not longer.

(2) A licence granted under the provisions of the London Sky Signs Act 1891 as amended by section 17 of the London County Council (General Powers) Act 1893 after the twenty-fourth day of August one thousand eight hundred and ninety-three may be renewed from the expiration of a period of two years from the date of issue of such licence for a further period of two years and on the expiration of that period for one other period of two years making with the original term of the licence six years in all but not longer.

(3) Every person desirous of obtaining a renewal of a licence to retain a sky sign for any such period as aforesaid may make application to the surveyor (*y*), for an inspection and survey of such sky sign and such application shall be dealt with as hereinafter provided and any person who shall have obtained a certificate from the surveyor after any such inspection and survey in accordance with the provisions hereinafter contained may at any time within fourteen days from (*z*) the issue thereof forward the same to the council with an application for a licence from the council (*a*) to retain the same sky sign and every such application for a licence shall be accompanied by a fee of five shillings which shall be paid to the council for and in respect of the registration of the licence and the council shall thereupon grant to such person a licence for the retention of such sky sign for a period of two years from the date of the issue of such licence.

(4) Every such application to the surveyor for the inspection and survey of a sky sign shall be accompanied by a payment of two guineas to such surveyor which shall be his fee for the inspection and survey and for the grant or refusal of the certificate as the case may be and it shall not be lawful for the surveyor to demand or receive any further fee or payment in respect thereof.

(5) The surveyor shall either grant a certificate that in his opinion the sky sign is so placed constructed and supported as not to be likely to involve danger to the public or he shall refuse to grant such certificate in which case he shall state the grounds of such refusal and such certificate or refusal shall be in the form set out in this section with such modifications if any as the circumstances may require :—

(*x*) **London Sky Signs Act, 1891; London Coun. Counc. (Genl. Powers) Act, 1893, sec. 17.** Repealed by sec. 215 and sched. 4, *post.*

(*y*) **Surveyor,** i.e., the district surveyor. Sec. 126, *ante.*

(*z*) **Within fourteen days from.** See note to sec. 24, *ante.*

(*a*) **Application to Council.** In the City the surveyor's certificate and the application are sent to the Commissioners of Sewers. Sec. 135, *post.*

57 & 58 Vict. ch. ccxiii.

FORM OF CERTIFICATE.

LONDON BUILDING ACT 1894.

District of

Whereas *A.B.* of has made application to me pursuant to the London Building Act 1894 to inspect and survey a sky sign erected at I hereby certify that I have inspected and surveyed the same and in my opinion the said sky sign may be retained as now constructed for two years from the date hereof without being likely to cause danger to the public.

Dated this day of 189 .

(Signed) *C.D.*
Surveyor.

FORM OF REFUSAL OF CERTIFICATE.

LONDON BUILDING ACT 1894.

District of

Whereas *A.B.* of has made application to me pursuant to the London Building Act 1894 to inspect and survey a sky sign erected at I hereby certify that I have inspected and surveyed the same and I refuse to certify that the said sky sign is so constructed as not to be likely to cause danger to the public for the following reasons—

Dated this day of 189 .

(Signed) *C.D.*
Surveyor.

Alteration of sky signs to meet surveyor's requirements.

130.—(1) Where the surveyor refuses to grant a certificate applied for under this Act the applicant may if he think fit and can lawfully do so execute such repairs to or alterations in or modifications of the sky sign as shall meet the objections thereto as stated in the form of refusal and may thereupon make a further application to the surveyor to inspect and survey the sky sign.

(2) If the surveyor on re-inspection and re-survey be of opinion that the sky sign has been so repaired altered or modified that it is not likely to involve danger to the public he shall grant a certificate under this Act with respect to such sky sign and an application for licence thereof may be made as in this Act provided.

(3) Every such application to the surveyor to re-inspect and re-survey a sky sign and for a certificate in respect thereof shall be accompanied by a payment of one guinea to such surveyor which shall be his fee for such re-inspection and re-survey and for the grant or refusal of a certificate thereupon as the case may be and it shall not be lawful for the surveyor to demand or receive any further fee or payment in respect thereof.

Notice of refusal of certificate to be sent to the council.

131. Where the surveyor refuses to grant a certificate applied for under this Act it shall be the duty of the surveyor forthwith to forward a copy of his refusal to the council (*b*).

Appeal against refusal of certificate.

132. Where the surveyor refuses to grant a certificate under this Act it

(*b*) **Copy of refusal.** In the City this is sent to the Commissioners of Sewers, instead of to the County Council. Sec. 135, *post*.

shall be lawful for the applicant at any time within fourteen days after (*c*) the date of such refusal to make application to the tribunal of appeal (*d*) by way of appeal against such refusal and such appeal shall be accompanied by a copy of the form of refusal by the surveyor. 57 & 58 Vict. ch. ccxiii.

133. In any of the following cases a licence under this Act shall become void viz. :— Forfeiture of licence.

(i) If any addition to any sky sign be made except for the purpose of making it secure under the direction of the surveyor;

(ii) If any change be made in the sky sign or any part thereof;

(iii) If the sky sign or any part thereof fall either through accident decay or any other cause;

(iv) If any addition or alteration be made to or in the house building or structure on over or to which any sky sign is placed or attached if such addition or alteration involves the disturbance of the sky sign or any part thereof;

(v) If the house building or structure over on or to which the sky sign is placed or attached become unoccupied or be demolished or destroyed.

134. If any sky sign be erected or retained contrary to the provisions of this Act or after the licence for the maintenance or retention thereof for any period shall have become void it shall be lawful for the council to take proceedings (*e*) for the taking down and removal of the sky sign in the same manner in all respects as if it were a structure certified to be in a dangerous state under part ix. of this Act except that the provisions of the said part with respect to arbitration shall not apply and it shall be lawful for the council or any officers servants or workmen appointed by them for that purpose (after obtaining the order of a petty sessional court (*f*) for the taking down of the sky sign and after the expiration of the period (if any) fixed by such order for taking down the same) to enter upon the land building or premises on or over which the sky sign is erected and to take down and remove the sky sign and to execute and do any works which may be necessary for that purpose and for leaving any building to which the same was attached in a condition of safety and all the expenses of and incidental to any such work shall be repaid and be recoverable as though the same were a penalty imposed by this Act (*g*). Removal of sky signs.

For the purpose of any such proceeding the expression "the owner" in the said part of this Act shall mean the occupier (*h*) of the house building or structure on or to which the sky sign is erected or attached or if the house building or structure is unoccupied then the person who would be the owner thereof within the meaning of this Act (*i*).

135. As regards the City (*k*) this part of this Act shall be read and have effect as if the commissioners of sewers were named therein instead of the council and all costs and expenses of such commissioners in the execution of this part of this Act shall be paid out of their consolidated rate as part of the expenses of such commissioners. Application of this part of Act within the City.

(*c*) **Within fourteen days after.** See note to sec. 24, *ante*.
(*d*) **Tribunal of appeal.** See secs. 175—186, *post*.
(*e*) **Proceedings.** In addition to the proceedings here authorised, penalties are imposed by sec. 200 (11), *post*.
(*f*) **Petty sessional court.** See note to sec. 83, *ante*.
(*g*) **Recovery of expenses.** See sec. 166, *post*.
(*h*) **Occupier** does not include a lodger. Sec. 5 (30), *ante*.
(*i*) **Owner within meaning of Act.** See sec. 5 (29), *ante*.
(*k*) **The City** is defined by sec. 5 (43), *ante*.

57 & 58 Vict. ch. ccxiii.

PART XIII.—SUPERINTENDING ARCHITECT AND DISTRICT SURVEYORS.

Power for council to appoint superintending architect.

136.—(1) The council may for the purpose of aiding in the execution of this Act appoint some fit person to be called "the superintending architect of metropolitan buildings" together with such number of clerks as they think fit.

(2) Such architect and clerks shall be removable by the council and perform such duties as the council direct.

(3) The superintending architect shall not practise as an architect or follow any other occupation.

(4) There shall be paid to the superintending architect and clerks such salaries as the council may direct.

(5) Subject to the foregoing provisions of this section the person who at the commencement of this Act is the superintending architect of metropolitan buildings shall continue to be the superintending architect under this Act.

Power of superintending architect to appoint deputy.

137. If the superintending architect is prevented by illness infirmity or any other unavoidable cause from attending to the duties of his office he may with the consent of the council appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them.

Buildings to be supervised by district surveyors.

138. Subject to the provisions of this Act and to the exemptions in this Act mentioned every building or structure and every work done to in or upon any building or structure and all matters relating to the width and direction of streets the general line of buildings in streets the provision of open spaces about buildings and the height of buildings shall be subject to the supervision of the district surveyor (*l*) appointed to the district in which the building or structure is situate.

Powers of council as to surveyors and districts.

139.—(1) The council shall have the following powers with regard to the district surveyors and their districts (that is to say):—

(a) They may alter the limits of the district of any district surveyor or unite any two or more such districts and place any such altered district under the supervision of any district surveyor and do all such matters and things as are necessary for carrying into effect the power hereby given;

(b) They may dismiss or suspend any district surveyor and in case of any suspension or during any vacancy may appoint a temporary substitute provided that their dismissal of a district surveyor who held such office before the fourteenth day of August one thousand eight hundred and fifty-five shall be subject to the consent of a Secretary of State;

(c) On a vacancy occurring in the office of a district surveyor they may appoint another qualified person in his place;

(d) They may pay such amount of compensation as they think fit or as in case of disagreement shall be determined by the tribunal of appeal to any district surveyor who is deprived of his office in pursuance of the power hereby given of altering the limits of districts.

(*l*) **Supervision of the district surveyor.** In addition to the powers and duties here referred to, it is the duty of each district surveyor to inspect and survey sky signs in his district, and report to the County Council or Commissioners of Sewers, as the case may be, from time to time. Part xii., *ante*.

(2) Subject to the foregoing provisions of this section the districts existing at the commencement of this Act shall continue to be districts for the purposes of this Act and the several persons who at the commencement of this Act are district surveyors shall continue to be district surveyors under this Act. 57 & 58 Vict. ch. ccxiii.

140. The Royal Institute of British Architects may cause to be examined by such persons and in such manner as they think fit all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor and shall grant certificates of competency to the candidates found deserving of the same and a person who has not already filled the office of district surveyor shall not be qualified to be appointed to that office unless he has received a certificate of competency from the said institute or has been examined in such other manner as the council may direct and been found competent in such examination. Examination of candidates for office of surveyor.

141. Every district surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the council and the council shall forthwith communicate to the local authority (*m*) any change in the office of such district surveyor. Surveyor to have an office.

142. If any district surveyor is prevented by illness infirmity or any other unavoidable circumstance from attending to the duties of his office he may with the consent of the council appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them. Power of surveyor to appoint deputy.

143. Where it appears to the council that on account of the pressure of business in any district or on any other account the surveyor of that district cannot discharge his duties promptly and efficiently the council may direct any other district surveyor to assist the surveyor of that district in the performance of his duties or appoint some other person to give such assistance and the assistant surveyor shall be entitled to receive all fees payable in respect of the services performed by him. Power to appoint assistant surveyor.

144. If any building or structure be executed or any work done to in or upon any building or structure by or under the superintendence of any district surveyor acting professionally or on his own private account (*n*) that surveyor shall not survey such building or structure for the purpose of this Act or act as district surveyor in respect thereof or in any matter connected therewith but it shall be his duty to give notice to the council who shall then appoint some other district surveyor to act in respect of the matter. Surveyor not to act in case of works under his professional superintendence.

145. In the following cases and at the following times (that is to say) :— Notices to be given to surveyor by builder.

(a) Where a building or structure or work is about to be begun then two clear days (*o*) before it is begun ; and

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(*m*) **Local authority** is defined by sec. 5 (42), *ante*.

(*n*) **On his own private account.** Every district surveyor appointed since January 1st, 1895, is required to give his whole time to the duties of his office. Lon. Coun. Counc. Standg. Orders.

(*o*) **Two clear days**, i.e., two days exclusive of the day on which the notice is served and the day on which the work is commenced or resumed. *Railway Sleepers Supply Co., In re*, *ante*, p. 291.

57 & 58 Vict. ch. ccxiii.

(b) Where a building or structure or work is after the commencement thereof suspended for any period exceeding three months (*p*) then two clear days before it is resumed; and

(c) Where during the progress of a building or structure or work the builder employed thereon is changed then two clear days before a new builder enters upon the continuance thereof;

the builder or other person causing or directing the work to be executed shall serve on the district surveyor a building notice (*q*) respecting the building or structure or work (*r*) Every building notice shall state the situation area height number of storeys and intended use of the building or structure and the number of buildings or structures if more than one and the particulars of the proposed work (*s*) and the name and address of the person giving the notice and those of the owner then in possession of and the occupier of the building or structure or of its site or intended site. All works in progress at the same time to in or on the same building or structure may be included in one building notice.

Surveyor to enforce execution of Act.

146. Every district surveyor shall upon the receipt of any such notice as aforesaid and also upon any work being observed by or made known to him which is affected by the provisions of this Act or byelaws made thereunder but in respect of which no notice has been given and also from time to time during the progress of any work affected by such provisions and byelaws (*t*) as often as may be necessary for securing the due observance of such provisions and byelaws survey any building or work hereby placed under his supervision and cause all such provisions and byelaws to be duly observed.

Notice to be evidence of intended works.

147. Every notice served in pursuance of this Act shall be deemed in any question relative to any building structure or work to be primâ facie evidence as against the builder of the nature of the building structure or work proposed to be built or done.

Power of entry to inspect buildings.

148.—(1) The district surveyor of any district at all reasonable times (*u*) during the progress and during fourteen days next after the

(*p*) **Months**, i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3.

(*q*) **Building notice.** This must be in writing (sec. 187, *post*), and may be served in the manner prescribed by sec. 188, *post*. As to the building notices which are also required to be served on the respective vestries and district boards, see the Met. Man. Act, 1855, sec. 76, and note thereto, *ante*.

Under the repealed Met. Bldg. Act, 1855, secs. 38 and 85, it was held that neglect of the building owner to give the required building notice to the district surveyor did not deprive him of the protection of the Act as against an adjoining tenant, his only liability being to penalties. *Wheeler* v. *Gray*, *ante*, p. 434. For penalties for not sending the building notice to the district surveyor, see sec. 200 (11) (b), *post*.

(*r*) **Building, structure, or work.** Movable seating, consisting of tiers of wooden platforms erected temporarily in a large hall from time to time, was held not to be a "building structure or work" within the meaning of this section, and the owners were held not to be required to serve a notice on the district surveyor upon each occasion on which they erected it. *Venner* v. *M'Donnell* (1897), 1 Q. B. 421; 66 L. J. Q. B. 273.

(*s*) **Particulars of work.** Where a byelaw under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), sec. 157, required complete plans of every intended building, and the respondent gave notice of his intention to build a house, and sent in plans, which were approved, but during the progress of the buildings he made substantial deviations from the plans, it was held that he should have sent in fresh plans in accordance with the change in his intention, and that he was liable to be convicted for not doing so. *James* v. *Masters* (1893), 1 Q. B. 355; 57 J. P. 167.

(*t*) **Byelaws.** See sec. 164, *post*.

(*u*) **Reasonable times.** See *Small* v. *Bickley*, *ante*, p. 343.

completion of any building structure or work in such district affected by any of the provisions of this Act or by any byelaws made thereunder or by any terms or conditions on which the observance of any such provisions or byelaws may have been dispensed with may enter and inspect such building structure or work. 57 & 58 Vict. ch. ccxiii.

(2) The district surveyor may for the purpose of ascertaining whether any buildings erected in those premises are in such a situation or possess such characteristics as are required in order to exempt them from the operation of this part of this Act at all reasonable times and after reasonable notice enter any premises except buildings exempt from the operation of parts vi. and vii. of this Act (*x*) and he may do therein all such things as are reasonably necessary for the above purpose.

149. Where by reason of any emergency any act or work is required to be done immediately or before notice can be given as aforesaid such act or work may be done on condition that before the expiration of twenty-four hours after it has been begun notice thereof is served (*y*) on the district surveyor. In case of emergency works to be commenced without notice.

150. Where it appears from the building notice served on the district surveyor under this Act that it is proposed to erect any building or structure or to do any work to in or upon any building which will be in contravention of this Act or that anything required by this Act is proposed to be omitted the district surveyor shall serve upon the builder or building owner (*z*) a notice of objection to such proposed erection and in the event of the builder or the building owner being dissatisfied with the decision of the surveyor he may within fourteen days of (*a*) the date of the notice of objection appeal to a petty sessional court (*b*) who may make an order either affirming the objection or otherwise. As to service of notice of objection on builder or building owner.

151. In any of the following cases (that is to say) :— Notice by surveyor in case of irregularity.

(a) where in erecting any building or structure or in doing any work to in or upon any building anything is done in contravention of this Act or anything required by this Act is omitted to be done; or

(b) where the district surveyor on surveying or inspecting any building or work in respect of which notice has not been served as required by this part of this Act finds that the same is so far advanced that he cannot ascertain whether anything has been done in contravention of this Act or whether anything required by this Act has been omitted to be done;

the district surveyor shall serve on the builder engaged in erecting (*c*) such building or structure or in doing such work a notice (hereinafter referred to as a notice of irregularity) requiring him within forty-eight hours from the date of the notice to cause anything done in contravention of this Act to be amended or to do anything required to be done by this Act which

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(*x*) **Exempt from Parts VI. and VII.** See secs. 201—206, *post*, and sec. 86, *ante*.

(*y*) **Notice is served.** The notice must be in writing (sec. 187, *post*), and may be served in the manner provided by sec. 188, *post*.

(*z*) **Builder; building owner.** Defined by sec. 5, sub-secs. (33) and (31), *ante*.

(*a*) **Within fourteen days of.** See note to sec. 24, *ante*.

(*b*) **Petty sessional court.** See note to sec. 83, *ante*.

(*c*) **Builder engaged in erecting.** "Builder" is defined by sec. 5 (33), *ante*. The present section applies only to a builder engaged on a building which is still incomplete. *Wallen* v. *Lister* (1894), 1 Q. B. 312; 63 L. J. M. C. 51. As to notice of irregularity after completion of the building, see sec. 152.

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has been omitted to be done or to cause so much of any building structure or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid to be to a sufficient extent cut into laid open or pulled down.

Notice of irregularity after completion of building.

152.—(1) In order to provide for the service of a notice of irregularity after and notwithstanding that the building or structure has ceased to be in charge of or under the control of the builder the following provisions shall have effect:—

(a) If notice in writing shall have been served upon the district surveyor by the builder or owner (*d*) of the date at which such building has ceased to be in the charge of or under the control of the builder then at any time before the expiration of fourteen days after the service of such notice a notice of irregularity may if the district surveyor thinks fit be served on the owner or occupier (*d*) of the building or structure or other the person causing or directing or who has caused or directed the work instead of or in addition to the builder (if any);

(b) Where no such notice shall have been served upon the district surveyor a notice of irregularity may at any time within twenty-one days after (*e*) completion of the building or structure be served on the owner or occupier of the building or structure or other the person causing or directing or who has caused or directed the work instead of or in addition to the builder (if any).

(2) When the owner of the building or structure does not allow the builder to comply with the requisition of a notice of irregularity served on the builder and the builder serves notice on the district surveyor to that effect a notice of irregularity may at any time within fourteen days after (*e*) service of the notice by the builder on the district surveyor be served on the owner or occupier of the building or structure or other the person causing or directing or who has caused or directed the work instead of or in addition to the builder (if any).

(3) When a notice of irregularity is served under this section the provisions of this Act as to the consequences of such a notice so far as they relate to the builder shall apply to the owner occupier or other person served.

(4) Nothing in this section shall prejudice any remedy of an owner occupier or other person against the builder.

Summary proceedings on non-compliance with notice.

153.—(1) If the person on whom the notice of irregularity is served make default in complying with that notice within the period named (*f*) therein a petty sessional court (*g*) on complaint made in a summary manner as provided by the Summary Jurisdiction Acts (*h*) by the district surveyor may make an order on such person requiring him to comply with the notice or with any requisitions therein which may in the opinion of the court be authorised by this Act within a time to be named in the order.

(2) If the order be not complied with the council may if they think fit after giving seven days' notice to such person enter with a sufficient number of workmen upon the premises and do all such things as may be

(*d*) **Builder; owner; occupier.** Defined by sec. 5, sub-secs. (33), (29), and (30), *ante*.

(*e*) **Within . . . days after.** See note to sec. 24, *ante*.

(*f*) **Period named**, i.e., forty-eight hours. Sec. 151, *ante*.

(*g*) **Petty sessional court.** See note to sec. 83, *ante*.

(*h*) **Summary manner.** See sec. 166, *post*.

necessary for enforcing the requisitions of the notice and for bringing any building or work into conformity with the provisions of this Act and all expenses incurred by the council in so doing may be recovered in a summary way either from the person on whom the order was made or from the owner (*i*) of the premises. 57 & 58 Vict. ch. ccxiii.

Payments to surveyors for ordinary and special services.

154.—(1) There shall be paid by the builder (*k*) or in his default by the owner or occupier (*k*) as the case may be of the building or structure in respect whereof the same are chargeable to every district surveyor in respect of the several matters mentioned in parts i. and iii. of the third schedule to this Act the fees therein specified or such other fees not exceeding the amounts therein specified as may be directed by the council.

(2) If in consequence of any reduction being made by the council in the amount of the said fees the income of any existing district surveyor is diminished the council shall grant to him compensation in respect of such diminution.

Council to pay district surveyor in relation to formation of streets, &c.

155. The council shall pay to the district surveyor such fees as the council shall from time to time determine (*l*) in respect of any service required to be performed by the district surveyor in relation to the formation or laying out of streets lines of building frontage and any like service which the district surveyor may be required to perform under this Act.

Fees in relation to evidence before tribunal.

156. The council shall pay to the district surveyor such fees as may be from time to time appointed by the tribunal of appeal in respect of any work done by the district surveyor in relation to the preparation of evidence and giving the same before the tribunal of appeal (*m*).

Periods when surveyors entitled to fees.

157.—(1) At the expiration of the following periods (that is to say):—

(a) Of fourteen days after the roof of any building surveyed by a district surveyor under this Act has been covered in; and

(b) Of fourteen days after the completion of any work by this Act placed under the supervision of a district surveyor; and

(c) Of fourteen days after any special service in respect of any building structure or land has been performed by a district surveyor;

the district surveyor shall be entitled to receive the fees due to him from the builder (*k*) employed in erecting such building or structure or in doing such work or in doing any matter in respect of which any special service has been performed by the surveyor or from the owner or occupier (*k*) of the building or structure so erected or in respect of which such work has been done or service performed or of the land in upon or in respect of which such work has been done or service performed.

(2) If any such builder owner or occupier refuses to pay the said fees

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(*i*) **Recovery from owner.** "Owner" is defined by sec. 5 (29), *ante*. If the County Council think fit, they may recover the expenses from the occupier, up to the amount of his rent, leaving him to deduct the same from his rent. Sec. 173, *post*.

(*k*) **Builder; owner; occupier.** Defined by sec. 5, sub-secs. (33), (29), and (30), *ante*. Under the corresponding provision of the repealed Met. Bldg. Act, 1855, sec. 51, it was held that "owner" meant owner at the time the fees became due, and that the fees could not be recovered from a subsequent owner. *Tubb* v. *Good*, L. R. 5 Q. B. 443; 39 L. J. M. C. 135.

(*l*) **Such fees as the Council determine.** The fees to be paid by the County Council to district surveyors, in accordance with this section, are prescribed by the Council's Standing Orders.

(*m*) **Tribunal of appeal.** See secs. 175—186, *post*.

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they may be recovered in a summary manner (*n*) on its being shown to the satisfaction of the court that a proper bill specifying the amount of the fees was delivered to him or sent to him in a registered letter addressed to his last known residence.

Power of council to pay salaries to surveyors.

158.—(1) The council may at any time by order (*o*) cause such fixed salary as they may determine to be paid to any district surveyor by way of remuneration instead of fees so that the amount of such remuneration be not less than the amount of the average of the fees for the last seven completed years preceding such determination and thereupon the fees which would have been payable to such district surveyor in pursuance of this Act (*p*) shall be paid to the council and carried to the credit of the county fund.

(2) The council may at any time provide either wholly or partially for the payment of salaries to the district surveyors or to any of them out of the county fund and may thereupon abolish or reduce any fees by this Act made payable to the district surveyors.

Council may proceed on behalf of district surveyor.

159. The council may in any case where they shall think fit so to do undertake on behalf of a district surveyor any proceedings which would otherwise be undertaken by such district surveyor or may pay the costs incurred by any district surveyor in any proceedings taken by him under this Act.

Returns by District Surveyors.

Monthly returns by district surveyor to council.

160. Every district surveyor shall within seven days after the first day of every month (*q*) make a return to the council in such manner as they may appoint of all notices and complaints received by him relative to the business of his district and the results thereof and of all matters brought by him before any petty sessional court and of all the several works supervised and special services performed by him in the exercise of his office within the previous month and of all fees charged or received in respect thereof and shall specify in such return the description and locality of every building which has been built rebuilt enlarged or altered or on which any work has been done under his supervision with the particular nature of every work in respect of which any fee has been charged or received.

Return to be a certificate that works are in accordance with Act.

161. Every such return shall be signed by the district surveyor and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects in accordance with this Act to the best of his knowledge and belief and that they have been duly surveyed by him.

Audit of accounts of fees charged by district surveyor.

162. The superintending architect (*r*) or such other officer as the council appoint shall examine the monthly returns of the district surveyors and if any fees therein specified appear to him to be unauthorised by this Act or

(*n*) **Summary manner.** See sec. 166, *post*. Under the repealed Met. Bldg. Act, 1855, sec. 49, it was held that the decision of a magistrate upon a summons to recover a district surveyor's fees was the subject of an appeal under the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43). *Power* v. *Wigmore*, L. R. 7 C. P. 386 ; 36 J. P. 694.

(*o*) **By order.** This must be under seal. Sec. 187, *post*.

(*p*) **Fees payable to district surveyor.** See secs. 155 and 156, *supra*, and sched. 3, *post*.

(*q*) **Within seven days after the first,** i.e., on or before the eighth. See note to sec. 24, *ante*.

(*r*) **Superintending architect.** Defined by sec. 5 (34), *ante*.

to exceed in amount the fees so authorised or if any such account appears to be in any respect fraudulent or incorrect he shall make his report in writing to that effect to the council who shall thereupon take such steps in the matter as they deem expedient. 57 & 58 Vict. ch. ccxiii.

District surveyor to notify certain irregularities to the council.

163. Every district surveyor shall forthwith notify to the council any actual or probable contravention of the provisions of this Act in relation to any matter or thing with which it is not within his competency to deal of which notice or information has been given to him or which he has discovered.

PART XIV.—BYELAWS (*s*).

Power to council to make byelaws.

164.—(1) Subject to the provisions of this Act the council may make such byelaws not repugnant or contrary to the provisions of this Act as they may think expedient for the better carrying into effect the objects and powers of this Act with respect to the following matters (that is to say):—

The regulation of the plans level width surface and inclination of new streets (*t*) and for regulating the plans and level of sites for new buildings (*u*);

The forms of notice and other documents to be used for the purposes of this Act and other like matters of procedure;

Foundations and sites of buildings and other erections (*x*);

(*s*) **Byelaws.** The power to make byelaws, regulations, &c., conferred by any Act passed since 1889, includes the power, exerciseable in the like manner and subject to the like consent and conditions to revoke, vary or amend them. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 32 (3). As to general principles governing the power to make byelaws, and their limits, effect, and validity, see note to sec. 23 of the Mun. Corp. Act, 1882, *ante*. All byelaws, regulations, &c., made under any Act repealed by this Act, remain in force so far as they are applicable, until revoked, altered, or varied by byelaws made under this Act. Sec. 216, *post*. No byelaws under the present Act had been issued up to the time of the publication of this work.

(*t*) **Plans, level, &c., of new streets.** Byelaws made by the Met. Bd. Wks., dated March 17th, 1857, as to the formation of new streets, were still in force at the time of going to press. See sec. 216, *post*. Further regulations as to the formation and widening of streets, and the drawings required, are published in the County Council's Standing Orders.

(*u*) **Plans for new buildings.** A byelaw made under the Leeds Improvement Act, 1893 (56 & 57 Vict. c. ccx.), that "any person who shall erect a new building without having the plans approved by the corporation shall be liable to a penalty," was held to be valid. *Cook* v. *Hainsworth* (1896), 2 Q. B. 85; 65 L. J. M. C. 190. Under the Pub. Hlth. Act, 1875 (38 & 39 Vict. c. 55), when an owner who proposed to lay out his land as a building estate, deposited plans showing that the houses were to be drained with drains ending in the middle of the proposed new streets, it was held that the local authority could not make it a condition of their approval of the plans, that the owner should construct at his own expense the sewers with which the drains were intended to communicate. *Reg.* v. *Tynemouth Rural Dist. Counc.* (1896), 2 Q. B. 451; 65 L. J. Q. B. 545. Where a rural district council refused to approve building plans on the ground that they were not in conformity with their byelaws, it was held that an action of *mandamus* would not lie to compel them to do so, and that the proper remedy, if any, was by an application to the Queen's Bench for a prerogative writ of *mandamus*. *Smith* v. *Chorley Dist. Counc.* (1897), 1 Q. B. 678; 66 L. J. Q. B. 427.

(*x*) **Foundations and sites of buildings, &c.; mode and materials of foundations, &c.; description and quality of substances of walls.** With respect to these, the City was exempt from the byelaws authorised by the Met. Man. and Bldg. Acts Amend. Act, 1878, secs. 16 and 20 (repealed), and is therefore exempt from the byelaws of the County Council under this Act. Sec. 165, *post*.

Byelaws relating to these matters, made by the County Council under the repealed Act, and dated Oct. 13th, 1891, were still in force at the date of publication of this work. See sec. 216, *post*.

The foundation of every house and building which it is intended to build or rebuild must be laid at such level as will permit of the drainage of such house or building in compliance with the Met. Man. Act, 1855. *Ib.* sec. 76, *ante*.

57 & 58 Vict. ch. ccxiii.

The mode in which and the materials with which such foundations and sites are to be made excavated filled up prepared and completed for securing stability and for purposes of health (*y*);

The thickness (*z*) and the description and quality of the substances of which walls may be constructed for securing stability the prevention of fires and for purposes of health (*y*);

The dimensions of wooden bressummers (*a*);

The dimensions of joists of floors;

The protection of ironwork used in the construction of buildings from the action of fire;

Woodwork in external walls (*b*);

The description and quality of the substances of which plastering may be made (*c*);

The mode in which and the materials with which any excavation made within a line drawn outside the external walls of a house building or other erection and at a uniform distance therefrom of three feet shall be filled up (*c*);

The regulation of lamps signs or other structures overhanging (*d*) the public way not being within the City (*e*);

Provided that any such byelaws as to the regulation of lamps signs and other overhanging structures shall be administered by the local authority (*f*);

The means of escape from fire in buildings exceeding sixty feet in height (*g*);

The duties of district surveyors in relation to any byelaws made in pursuance of this section;

The deposit with district surveyors of any plans of buildings submitted for their certificate;

The regulation of the amounts of the fees to be paid to district surveyors (*h*) in respect of their duties under any such byelaws;

The imposition for every offence committed against any byelaws made under this Act of a penalty not exceeding five pounds and a daily penalty not exceeding two pounds for every day during which such offence continues after conviction. Such penalties to be recovered by summary proceedings (*i*).

(*y*) **Foundations and sites of buildings, &c.; mode and materials of foundations, &c.; description and quality of substances of walls.** See note (*x*) on page 461.

(*z*) **Thickness of walls.** See also sec. 53, *ante*. The power to make byelaws as to the thickness of walls is new, and apparently extends to the City. The power had not been exercised at the date of publication of this work.

(*a*) **Bressummer** is defined by sec. 5 (7), *ante*.

(*b*) **Woodwork in external wall.** See sec. 55, *ante*.

(*c*) **Description and quality of plastering; mode and material of filling excavations.** The City was exempt from the byelaws relating to these matters authorised by the repealed provisions of the London Council (Genl. Powers) Act, 1890, sec. 31, and is therefore exempt from the byelaws of the County Council with respect to the same under the present Act. Sec. 165, *post*. Byelaws made by the County Council under the repealed provisions, and dated Oct. 13th, 1891, were still in force at the time of the publication of this work. See sec. 216, *post*.

(*d*) **Overhanging structures.** See also sec. 73, and note thereto, *ante*.

(*e*) **Not within the City.** "The City" is defined by sec. 5 (43), *ante*. Projections within the City are under the control of the Commissioners of Sewers, under the City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii.), secs. 154—156.

(*f*) **Local authority** is defined by sec. 5 (42), *ante*.

(*g*) **Escape from fire.** See also sec. 63, and note thereto, *ante*.

(*h*) **Fees to district surveyors.** See also secs. 155 and 156, *ante*, and sched. 3, *post*.

(*i*) **Summary proceedings.** See sec. 166, *post*.

(2) The council may provide by any byelaw that in any case in which the council think it expedient they may dispense with the observance of any byelaw made under this section on such terms and conditions (if any) as they think proper. 57 & 58 Vict. ch. ccxiii.

(3) No byelaw shall have any force or effect unless or until it shall have been submitted to and confirmed at a meeting of the council subsequent to that at which the byelaw shall have been made nor shall any byelaw have any force or effect until the same shall have been allowed by the Local Government Board (*k*).

(4) Not less than two months before (*l*) applying to the Local Government Board for the allowance of any such byelaws the council shall give such notice of their intended application by advertisement in the London Gazette and otherwise as the Local Government Board shall direct and the council shall send a copy of the proposed byelaws as approved by them to the local authority (*m*) the Ecclesiastical Commissioners the Royal Institute of British Architects the Surveyors' Institution the London Chamber of Commerce (incorporated) and to the Institute of Builders and to such other societies and persons as the Local Government Board may direct and for one month at least before (*l*) any such application a copy of the proposed byelaws shall be kept at the county hall (*n*) and shall be open during office hours thereat to inspection without charge.

(5) All byelaws made and confirmed and allowed as aforesaid in pursuance of this Act shall be published in the London Gazette and printed and hung up at the county hall and be open to public inspection without payment and copies thereof shall be delivered to any person applying for the same on payment of such sum not exceeding two pence as the council shall direct and such byelaws when so published shall come into operation upon a date to be fixed by the Local Government Board in allowing the byelaws and the production of a printed copy of such byelaws authenticated by the seal of the council shall be evidence of the existence and of the due making allowance and publication of such byelaws in all prosecutions or other proceedings under the same without adducing proof of such seal or of the fact of such making confirmation allowance or publication of such byelaws.

165. No byelaw in respect of any matter from which the City is exempted by this Act or by any Act hereby repealed shall have any force or effect within the City (*o*). Saving for the City of London.

PART XV.—LEGAL PROCEEDINGS.

166. All offences penalties costs and expenses under this Act or any byelaw made under this Act directed to be prosecuted or recovered in a summary manner or the prosecution or recovery of which is not otherwise Summary proceedings for offences &c. and recovery of penalties.

(*k*) **Allowed by Loc. Govt. Bd.** The allowance by the Loc. Govt. Bd. of an invalid byelaw does not cure its invalidity. *Reg.* v. *Wood*, *ante*, p. 358.

(*l*) **Not less than two months; one month at least, before**, i.e., calendar months (Interpretation Act. 1889 (52 & 53 Vict. c. 63), sec. 3), exclusive of the date of applying and the date of giving the notice. *Railway Sleepers Supply Co., In re*, *ante*, p. 291.

(*m*) **Local authority**, is defined by sec. 5 (42), *ante*.

(*n*) **County hall.** See note to sec. 83, *ante*.

(*o*) **Exemption of City.** "The City" is defined by sec. 5 (43), *ante*. As to the exemptions of the City, see secs. 9, 12, 13, 26, and 84, and notes to sec. 164, *ante*, and sec. 201 (2) and (3), *post*.

57 & 58 Vict. ch. ccxiii.

provided for may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (*p*).

Proceedings by surveyor.

167. Any proceedings taken by a district surveyor may be continued by his duly appointed deputy (*q*) or successor in the office.

Powers of and appeal from county court.

168. Where jurisdiction is by this Act given to a county court (*r*) that court may settle the time and manner of executing any work or of doing any other thing and may put the parties to the case upon such terms as respects the execution of the work as the court thinks fit:

Provided that any person shall have the same right of appeal from any decision of a county court in any matter in which jurisdiction is given to such court by this Act as he would have under the County Courts Act 1888 from any decision of such court in any matter (*s*).

Application of penalties.

169. Notwithstanding anything in any other Act (*t*) one-half of all penalties recovered by the council under this Act shall be paid to the council Provided that it shall be lawful for any court by whom any penalty is imposed under this Act to direct that the whole or part thereof shall be applied in or towards payment of the costs of the proceedings.

Council may demolish buildings and sell materials and recover expenses.

170. Where any person has been convicted of an offence against any of the provisions of any part of this Act or any byelaw made thereunder by constructing erecting adapting extending raising altering uniting or separating any building or structure or any part of any building or structure in contravention of any provisions of any part of this Act it shall be lawful for the council after giving fourteen days' notice to such person to bring such building or structure into conformity with the said provisions and after default shall have been made in complying with such notice and notwithstanding the imposition and recovery of any penalty

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(*p*) **Summary Jurisdiction Acts.** Summary proceedings must be commenced within six calendar months from the time when the matter of complaint arose. Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 11. As to when the time begins to run, and for the manner of proceeding under the Summary Jurisdiction Acts, both before the court of summary jurisdiction, and on appeal to quarter sessions and to the High Court, see note to sec. 227 of the Met. Man. Act, 1885, *ante*.

The only appeal to quarter sessions from the decision of a court of summary jurisdiction under the present Act is that allowed by sec. 120 (2), *ante*, and the only appeal to the High Court is on a point of law in the form of a case stated.

No appeal lies to the Court of Appeal from a decision of the Queen's Bench Division on a case stated by a magistrate upon a summons for contravening the Act, such decision being a decision in a "criminal cause or matter" within the meaning of the Judicature Act, 1873 (36 & 37 Vict. c. 66), sec. 47. *Payne* v. *Wright* (No. 2), 61 L. J. M. C. 114; 56 J. P. 564.

(*q*) **Duly appointed deputy.** See sec. 142, *ante*.

(*r*) **Jurisdiction given in County Court.** See secs. 91 (2) and 94, *ante*, and sec. 196, *post*.

(*s*) **Appeal from County Court.** No appeal upon the facts lies to the High Court from the decision of a county court. But any party in an action or matter who is dissatisfied with the judgment in point of law or equity, or upon the admission or rejection of any evidence, may appeal therefrom to the High Court. County Courts Act, 1888 (51 & 52 Vict. c. 43), sec. 120. Notice of appeal must be given and the appeal entered within twenty-one days from the date of the judgment order or finding complained of. Rules of the Supreme Court, Order lix. r. 12.

(*t*) **Other Act.** The Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), sec. 47, requires penalties and forfeitures recovered summarily within the metropolitan police district, except those payable to the informer, to be paid to the receiver of the metropolitan police district.

Where under any Act any forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate in every case where that body is the party aggrieved. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 2 (2).

to cause complaint thereof to be made before a petty sessional court (*u*) who may thereupon issue a summons requiring the person making such default as aforesaid to appear to answer such complaint and if the said complaint is proved to the satisfaction of the court the court may make an order in writing authorising the council and it shall thereupon be lawful for the council to enter upon such building or structure with a sufficient number of workmen and to demolish or alter such building or structure or any part thereof so far as the same shall have been adjudged to be in contravention of this Act or any byelaw under this Act and to do whatever other acts may be necessary for such purpose and to remove the materials to some convenient place and if in their discretion they think fit sell the same in such manner as they may think fit and all expenses incurred by the council in demolishing or altering such building or structure or any part thereof and in doing such other acts as aforesaid or the balance of such expenses after deducting the proceeds of sale of the aforesaid materials (if the council thinks fit to sell the same) may be recovered from the person committing the offence aforesaid in a summary manner. 57 & 58 Vict. ch. ccxiii.

If the proceeds of such sale shall be more than sufficient to defray such expenses the council shall restore the surplus of such proceeds after deducting the amount of all such expenses to the owner (*x*) of the building or structure on demand.

171. The powers conferred by this part of this Act upon the council with respect to any building or structure in case such buiding or structure has been erected extended or raised contrary to the provisions of this Act beyond the general line of buildings in the street place or row of houses in which the same is situate shall extend and apply to and may be exercised by the local authority (*y*) in like manner as by the council. Procedure by local authorities in case of buildings in advance of general line.

172. Where by any provision of this Act (*z*) any surplus of the proceeds of the sale of any building structure or materials is made payable to any owner thereof and no demand is made by any person entitled thereto within one year of the receipt of the proceeds by the council then the same shall be paid into the Bank of England (Law Courts branch) to the account of the paymaster-general for the time being for and on behalf of the Supreme Court of Judicature to be placed to the credit of "ex parte the London County Council London Building Act 1894 the account of" the owner (describing him so far as reasonably practicable) subject to the control of the High Court and to be paid out to the owner on his proving his title thereto (*a*). Payment of surplus of proceeds into court.

173. Where it is by any provision of this Act declared that expenses are to be borne by or may be recovered from the owner of any premises (including under the term "owner" the adjoining and building owners respectively) the following rules shall be observed with respect to the payment of those expenses:— Payment of expenses by owners.

(*u*) **Petty sessional court.** See note to sec. 83, *post*.
(*x*) **Owner** is defined by sec. 5 (29), *ante*.
(*y*) **Local authority** is defined by sec. 5 (42), *ante*.
(*z*) **Provision of this Act.** See secs. 109 and 170, *ante*.
(*a*) **Payment into court.** See the Supreme Court Funds Rules, 1894, 29—42, for the manner of paying money into court. As to payment out, see *ib.* 44—68.

57 & 58 Vict. ch. ccxiii.

(1) The owner immediately entitled in possession to the premises or the occupier thereof shall in the first instance pay the expenses with this limitation that an occupier shall not be liable to pay any sum exceeding in amount the rent due or that will thereafter accrue due from him in respect of the premises during the period of his occupancy;

(2) If there are successive owners each of them shall be liable to contribute to the expenses in proportion to his interest;

(3) Any difference arising as to the amount of contribution shall be decided by arbitration (*b*);

(4) If some of the owners liable to contribution cannot be found the deficiency so arising shall be divided amongst the owners who can be found;

(5) Any occupier of premises who has paid any such expenses may deduct the amount so paid from any rent payable by him to any owner of the same premises and any owner who has paid more than his due proportion of any such expenses may deduct the amount so overpaid from any rent payable by him to any other owner of the same premises;

(6) If default is made by any person in payment of any expenses payable by him in the first instance under this section the same may be recovered in a summary way (*c*) and if default is made by any person in repaying to any other person any money recoverable under this section such moneys may be recovered in the same manner as if the obligation to pay such moneys were a simple contract debt (*d*).

As to periods for giving consent &c. expiring in vacations.

174. Where the period within which for the purposes of this Act any sanction consent approval or allowance in respect of any matters arising under parts ii. or v. of this Act is to be given or refused by the council or within which any objection is to be made or other act done by the council would expire on any day between the eighth day of August and the fourteenth day of September (both inclusive) such period shall be deemed to be extended for twenty-eight days.

Tribunal of Appeal.

Constitution of tribunal of appeal.

175. For the purposes of this Act a tribunal of appeal shall be constituted as follows:—

One member shall be appointed by a Secretary of State;

One Member shall be appointed by the council of the Royal Institute of British Architects;

One member shall be appointed by the council of the Surveyors' Institution:

(*b*) **Decided by arbitration.** i.e., in the manner provided by the Arbitration Act, 1889 (52 & 53 Vict. c. 49). From a case decided under the Public Health Act, 1875 (38 & 39 Vict c. 55), sec. 150, it would appear that the amount settled by arbitration can only be recovered in the manner provided by sub-sec. (6), *supra*, and cannot be enforced under sec. 12 of the Arbitration Act, 1889. *Willesden Loc. Bd.* v. *Wright* (1896), 1 Q. B. 412; 65 L. J. Q. B. 567. See also *St. Pancras Vestry* v. *Batterbury*, *ante*, p. 202.

(*c*) **Summary way.** See sec. 166, *ante*.

(*d*) **Simple contract debt.** i.e., the amount, if it is not more than fifty pounds, may be recovered in the county court (County Courts Act, 1888 (51 & 52 Vict. c. 43), sec. 56); and in the High Court if it exceeds that sum.

No member or officer of the council shall be a member of the tribunal of appeal. 57 & 58 Vict. ch. ccxiii.

176. Members of the tribunal of appeal shall be appointed for a term of five years and any such member shall be eligible for re-appointment. Duration of office.

177. It shall be lawful for the Lord Chancellor if he think fit to remove for inability or misbehaviour or other good and sufficient cause any member of the tribunal of appeal. Removal of members.

178. Upon the occurrence of any vacancy in the tribunal of appeal or during the temporary absence through illness or other unavoidable cause of any member thereof, a Secretary of State, the council of the Royal Institute of British Architects, or the council of the Surveyors' Institution (as the case may be) whichever of them shall have appointed the member of the tribunal whose place shall be vacated shall appoint forthwith a fit person to be a member (either temporary or permanent) of the tribunal in lieu of the member whose place is vacated or who is temporarily absent as aforesaid. Vacancies to be supplied.

179. Each member of the tribunal of appeal shall be entitled to such remuneration either by way of annual salary or by way of fees or partly in one way and partly in the other as a Secretary of State may from time to time fix. Remuneration of members of tribunal.

180. It shall be lawful for the tribunal of appeal to appoint such clerks officers and servants as they may find necessary who shall be paid such salaries as shall be determined by the council and to provide offices and to obtain such professional advice and assistance as they may find necessary. Officers &c. of tribunal.

181. It shall be lawful for the council to defray the expenses of supporting any decision of the council or of the superintending architect or of their engineer or of a district surveyor by counsel and witnesses before the tribunal. Power for council to support decisions of officers before tribuna

182. It shall be lawful for the tribunal at any time to state and the tribunal shall if ordered by the High Court or a judge thereof on an application in a summary manner made by any party to the appeal state a case for the opinion of the High Court on any question of law involved in any appeal submitted to them. The High Court shall hear and determine the question or questions of law arising on any case stated by the tribunal of appeal and shall thereupon reverse affirm or amend the determination (if any) in respect of which the case has been stated or remit the matter to the tribunal of appeal with the opinion of the court on the case stated or may make such other order in relation to the matter as the circumstances of the case require and may make such order as to the costs of the case and in the High Court as to the court may seem fit. Tribunal may state case for opinion of High Court

183. The tribunal of appeal shall subject to the provisions of this Act have jurisdiction and power to hear and determine appeals referred to them under this Act (*e*). Procedure of tribunal.

(*e*) **Appeals referred to tribunal of appeal.** The sections of this Act referring appeals to the tribunal of appeal are secs. 5 (8); 13 (3) and (4); 19, 25, 29, 41 (1) (iii) (g), (iv) (b), and (vi); 41 (2); 42 (v); 43 (iii); 44, 46, 48, 78, 79, 122, and 132, *ante*. The concurrence of the tribunal of appeal is also required with respect to the regulations of the County Council under sec. 123, *ante*.

57 & 58 Vict. ch. ccxiii.

For all the purposes of and incidental to the hearing and determination of any appeal the tribunal shall subject to any rules of procedure duly made have power to hear the council and the parties interested either in person or by counsel solicitor or agent as they may think fit and to administer oaths and to hear and receive evidence and to require the production of any documents or books and to confirm or reverse or vary any decision and make any such order as they may think fit and the costs of any of the parties to the appeal including the council shall be in the discretion of the tribunal.

Regulations as to procedure and fees.

184. The tribunal of appeal may from time to time subject to the approval of the Lord Chancellor make regulations (*f*) consistent with the provisions of this Act as to the procedure to be followed in cases of appeal to the tribunal including the time and notice of appeal (*g*) and as to fees to be paid by appellants and other parties.

Enforcement of decision of tribunal.

185. Any order of the tribunal of appeal may be enforced by the High Court as if it had been an order of that court.

Fees &c. to be paid to council. Expenses.

186. All fees and sums of money paid to the tribunal of appeal shall be paid over to the council and carried to the county fund and the salaries or fees payable to members of the tribunal and the office and establishment expenses of the tribunal and expenses incurred by the tribunal and the council in reference thereto shall be defrayed out of the county fund.

Notices.

Notices to be in writing.

187.—(1) Notices orders and other such documents under this Act shall be in writing (*h*) and notices and documents other than orders when issued by the council shall be sufficiently authenticated if signed by their clerk or by the officer by whom the same are given or served.

(2) Orders shall be under the seal of the council.

Service of notices.

188.—(1) Any notice order or other document (*i*) required or authorised to be served under this Act the service of which is not provided for by the Summary Jurisdiction Acts (*k*) the Lands Clauses Acts (*l*) or the Companies Clauses Consolidation Act 1845 (*m*) may be served by delivering a copy thereof at or by sending a copy thereof by post in a

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(*f*) **Regulations.** The regulations of the tribunal of appeal are dated February 21st, 1895, and were approved by the Lord Chancellor on March 1st, 1895.

(*g*) **Time and notice of appeal.** Under sec. 48, *ante*, the time for appealing is twenty-one days, and notice must be given within that period to the owner or lessee therein mentioned. Under sec. 132, *ante*, the time for appealing is fourteen days. In all other cases appeals must be lodged and the fees paid at the office of the tribunal, No. 13A, Great George Street, Westminster, by hand, and the required notices given to the persons interested, within fourteen days after notice of the decision appealed against. Regulations of the Tribunal of Appeal, February 21st, 1895.

(*h*) **Writing** includes printing, lithography, photography, or other modes of representing words in a visible form. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 20.

(*i*) **Notice, order, or other document.** See *Reg.* v. *Mead*, *ante*, p. 348.

(*k*) **Summary Jurisdiction Acts.** The Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), sec. 1, provides for the service of summonses in summary proceedings.

(*l*) **The Lands Clauses Consolid. Act, 1845** (8 Vict. c. 18), sec. 134, provides for the service of any summons or notice, or any writ or other proceedings, at law or in equity, requiring to be served under that Act, upon the promoters of an undertaking.

(*m*) **The Companies Clauses Consolid. Act, 1845** (8 & 9 Vict. c. 16), sec. 135, provides for the service of any summons or notice, or any writ, or other proceeding, at law or in equity, requiring to be served upon a company under that Act.

registered letter (*n*) to the usual or last known residence (*o*) in the United Kingdom of the person to whom it is addressed or by delivering the same to some person on the premises to which it relates or if no person be found on the premises then by fixing a copy thereof on some conspicuous part of the building to which it relates and in the case of a railway company by delivering a copy thereof to the secretary at the principal office of the said company (*p*). 57 & 58 Vict. ch. ccxiii.

(2) Any notice order or other document to be served upon a builder shall be deemed to be sufficiently served if posted in a registered letter addressed to such builder at the place of address stated in his building notice (if any) or in default thereof at his office or any one of his principal offices or if a copy thereof be fixed on some conspicuous part of the building to which it relates.

(3) Any notice by this Act required to be given to or served on the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming the premises) in respect of which the notice is given or served without further name or description.

(4) Any notice required by this Act to be served on a district surveyor may be served on him by post in a registered letter (*n*) addressed to him at his office or by leaving the same at his office.

PART XVI.—MISCELLANEOUS.

189. All expenses incurred by the council in carrying this Act into execution and not otherwise provided for shall be deemed to be general expenses incurred by the council and shall be raised and paid accordingly (*q*) and the costs charges and expenses preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be raised and paid by the council in like manner. Expenses how borne.

190. In any case where the council are authorised under this Act to refuse their sanction consent or allowance to the doing or omission of any act or thing the council may if they think fit instead of refusing such sanction consent or allowance give the same subject to such terms and conditions in relation to the subject matter of such sanction consent or allowance as the council think fit. Any such term or condition when accepted shall be binding on the owner (*r*) and occupier (*s*) of the building or structure or ground to which the sanction consent or allowance relates and if at any time any term or condition so accepted is not observed or fulfilled the owner or occupier in default shall be subject to a penalty as hereinafter provided (*t*). Power for council to annex conditions.

(*n*) **By post.** See *Walthamstow Urb. Dist. Counc.* v. *Henwood*, *ante*, p. 348.

(*o*) **Last known residence.** See *Newport (Mayor, &c., of)* v. *Lang*, *ante*, p. 348.

(*p*) **Railway company's principal office**, i.e., the place at which the business of the company is controlled and managed. *Palmer* v. *Caledonian Railway Co.* (1892), 1 Q. B. 823; 61 L. J. Q. B. 552.

(*q*) **General expenses** incurred by the County Council are paid out of the county fund. Loc. Govt. Act, 1888, secs. 40 (9) and 68, *ante*. Expenses of the Council in relation to dangerous and neglected structures under part ix., *ante*, are carried to the special county account. *Ib.* sec. 41 (3), and note thereto, and sec. 68 (3), *ante*; and sec. 104 of the present Act, *ante*.

(*r*) **Owner; builder.** Defined by sec. 5 (29) and (33), *ante*.

(*s*) **Occupier** does not include a lodger. Sec. 5 (30), *ante*.

(*t*) **Penalty hereinafter provided.** See sec. 200 (10), *post*.

57 & 58 Vict. ch. ccxiii.

As to buildings of historical interest.

191. In the event of its being necessary to take down any portion of an old building of architectural or historical interest constructed otherwise than in accordance with the regulations of this Act or in the event of the destruction of any part of such building the part so taken down or destroyed may with the consent of the council first obtained be restored in the same material and in the same design as it formerly was.

Power of entry to owner &c. to execute work.

192. Any owner builder (*u*) or other person and his servants workmen and agents may for the purpose of complying with any notice or order served or made on him in pursuance of this Act in respect of any building or structure room or place after giving seven days' notice (*x*) to the occupier (*y*) thereof and on production of the first-mentioned notice or order enter and from time to time without further notice re-enter such building or structure room or place and do all necessary works and things therein thereto or in connexion therewith.

Limitation of time for proceedings where notice not given.

193. Where any building has been erected or work done without due notice having been given to the district surveyor (in accordance with this Act or a byelaw made under this Act) the district surveyor may at any time within one month after (*z*) he has discovered that such building has been erected or work done enter the premises for the purpose of seeing that the provisions of this Act or any notice served or order made under the same have been complied with and the time during which the district surveyor may take any proceedings or do anything authorised or required by this Act (*a*) to be done by him in respect of such building or work shall begin to run from the date of his discovering that such building has been erected or work done.

Plans and documents to be property of council.

194. Applications plans and other documents delivered at the office of the council or to the district surveyor in pursuance of this Act or of any byelaw of the council thereunder shall on delivery there become the property of the council.

Mode of giving approval of council to plans.

195. The approval by the council of any plans or particulars for the purposes of this Act shall be signified in writing under the hand of the superintending architect.

Consent how given on behalf of owners not to be found.

196. Where any consent is required to be given any notice to be served or any other thing to be done by on or to any owner in pursuance of this Act if there is no owner or if any such owner cannot be found the judge of the county court may give such consent or do or cause to be done such thing on such terms and conditions as he may think fit and may dispense with the service of any notice which would otherwise be required to be served.

Storing of wood and timber.

197.—(1) It shall not be lawful for any person to erect or place a pile stack or store of cut or uncut timber lathwood firewood casks or barrels whether on or above the ground nearer to the street than the buildings forming the general line of buildings therein except in a position wherein such a pile stack or store stood on the first day of January one thousand eight hundred and ninety-four.

(*u*) **Owner; builder.** Defined by sec. 5 (29) and (33), *ante*.
(*x*) **Notice.** This must be in writing (sec. 187, *ante*), and may be served in the manner provided by sec. 188, *ante*.
(*y*) **Occupier** does not include a lodger. Sec. 5 (30), *ante*.
(*z*) **Within one month after.** See note to sec. 32, *ante*.
(*a*) **Authorised by this Act.** See secs. 151—153, *ante*.

(2) It shall not be lawful for any person to pile stack or store cut or uncut timber lathwood firewood casks or barrels in the same yard or ground or in any part of the same premises with any furnace except in the following cases:— 57 & 58 Vict. ch. ccxiii.

(a) Where the furnace is enclosed in a building or chamber constructed of fire-resisting materials (*b*); or

(b) Where there is a distance of not less than ten feet (*c*) between the furnace and the pile stack or store of timber lathwood firewood casks or barrels.

(3) No pile stack or store of timber lathwood firewood casks or barrels shall exceed sixty feet in height from the level of the ground (*d*).

(4) It shall not be lawful to form in any pile stack or store of timber lathwood firewood casks or barrels any room or chamber or space (other than a passage) to be used for any purpose whatever.

(5) Timber yards existing at the time of the passing of this Act shall comply with these provisions within two years from the date of the passing of the Act but the council shall have power in individual cases if they think fit to prolong this time for a term not exceeding seven years and shall have power to relax any of the provisions of this section.

(6) This section shall not apply to railway companies or canal companies so far as regards timber lathwood firewood casks or barrels in transit or piled stacked or stored on land occupied by them for the purposes of their undertakings (*e*) nor to timber lathwood firewood casks or barrels piled stacked or stored in or on any yard or other premises occupied by any dock company for the purposes of their undertaking or to any such yard or premises or to any person piling or stacking or storing timber lathwood firewood casks or barrels in or on any such yard or premises.

Removal of roof not to affect proceedings.

198. Proceedings with respect to a building shall not be affected by the removal or falling in of the roof or covering of such building.

Preventing obstruction in streets.

199. No person not being lawfully authorised (*f*) shall erect or place or cause to be erected or placed any post rail or fence bar obstruction or encroachment whatsoever in upon over or under any street (*g*) and no person not being lawfully authorised shall alter or interfere with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same.

The council may at the expiration of two days after giving notice in writing to such person to demolish or remove any such post rail fence bar obstruction or encroachment or to reinstate or restore such street to its former condition (as the case may be) demolish or remove any such post

(*b*) **Fire-resisting materials.** Defined by sec. 5 (36), *ante*.

(*c*) **Not less than ten feet,** i.e., measured in a straight line on a horizontal plane. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 34.

(*d*) **Level of the ground.** Defined by sec. 5 (8), *ante*.

(*e*) **For purposes of their undertakings.** See *Manchester, Sheffield, and Lincolnshire Ry. Co.* v. *Barnsley Union (Guardians of)*, *ante*, p. 404; and *Coole* v. *Lovegrove*, *post*, p. 476.

(*f*) **Person not lawfully authorised.** "Person" includes any body of persons, corporate or incorporate. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 19. Vestries and district boards are authorised to place posts, fences, &c., on the sides of footways and carriageways for the purposes of safety by the Met. Man. Act, 1855, sec. 108, *ante*; and the Metropolitan Paving Act, 1817, sec. 58, *post*.

No new street can be formed or laid out, or adapted for carriage traffic, which is not open at both ends from the ground upwards, without the consent of the County Council. Secs. 9 (3) and 11 (3), *ante*.

(*g*) **Street** is defined by sec. 5 (1), *ante*.

57 & 58 Vict. ch. ccxiii.

rail fence bar obstruction (*h*) or encroachment and reinstate or restore such street to its former condition and recover the expenses thereof from such person in a summary manner.

This section shall not apply within the City (*i*).

Offences against Act.

Offences against Act.

200. Subject to the provisions of this Act every person who does any of the things specified in this section shall be deemed to have committed an offence against this Act and shall be liable upon conviction in a summary manner to a penalty not exceeding the amount hereafter specified in connexion with such offence and to a further penalty not exceeding the amount hereafter stated as the daily penalty in connexion with such offence for every day on which the offence is continued after such conviction (that is to say):—

Forming or laying out streets.

(1) Every person who—

(a) commences to form or lay out alter or adapt any street or way without having first obtained the sanction of the council under this Act (*k*) or otherwise than in accordance with the conditions (if any) prescribed by the council in giving their sanction or by the tribunal of appeal as the case may be or commences to widen any street or way to a less extent than the prescribed distance without giving to the council the notice prescribed by this Act; or

Obstructing streets.

(b) unlawfully erects or places in upon or over any street or way any post fence bar obstruction or encroachment (*l*); or

(c) unlawfully permits any such post rail fence bar obstruction or encroachment in upon or over any street or way to remain after notice served upon him by the council to remove the same; or

(d) unlawfully alters or interferes with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out;

shall be liable to a penalty not exceeding ten pounds for every such offence and to a daily penalty not exceeding forty shillings:

Not setting back buildings.

(2) Every person who neglects or refuses for twenty-eight days after the service of any notices empowered to be served under part ii. of this Act requiring him to set back any building or structure to comply with the requirements of such notice or after the expiration of such period fails to carry out or complete the works necessary for such compliance within the time (if any) limited in such notice shall be

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(*h*) **Remove obstruction.** See further as to the power of the County Council to remove obstructions and encroachments on highways, the Loc. Govt. Act, 1888, sec. 11 (1), and cases cited in note thereto, *ante*. Numerous bars, gates, &c., have been removed in London under the provisions of the London Streets (Removal of Gates) Acts, 1890 and 1893 (53 & 54 Vict. ch. ccxlvii.; and 56 & 57 Vict. ch. lxvi.), which conferred on the County Council powers for the removal of certain gates and bars in those Acts specified.

(*i*) **The City** is defined by sec. 5 (43), *ante*. By the City of London Sewers Act, 1848 (11 & 12 Vict. ch. clxiii.), sec. 129, the Commissioners of Sewers of the City are empowered to place posts, fences, &c., at the sides of footways and carriageways for the purposes of safety, and to remove any obstruction or encroachment on any carriageway or footway within the City.

(*k*) **Formation, &c., of streets.** See secs. 6—12, 19, and 20, *ante*.

(*l*) **Obstructing streets.** See sec. 199, *supra*.

liable to a penalty of not less than forty shillings and not more than five pounds and to a daily penalty of not less than ten shillings and not more than forty shillings Provided always that this sub-section shall not apply to any non-compliance with such notice in the case of an intended highway where the same shall not be opened as a highway : 57 & 58 Vict. ch. ccxiii.

(3) Every person who— Offences against parts iii. v. vi. and vii.

(a) erects or brings forward any building or structure in contravention of any of the provisions of part iii. of this Act or of any conditions attached by the council to any consent given pursuant to such provisions ; or

(b) erects alters enlarges rebuilds or raises or commences to erect alter enlarge rebuild or raise any building or commences so to do so as to contravene any of the provisions of part v. of this Act ; or

(c) fails to comply with any of the provisions of part vi. of this Act ; or

(d) fails to comply with the requirements of any notice given to or served upon him under and in accordance with part vii. of this Act within the time (if any) specified in such notice ; or

(e) sets up erects or adapts any building or structure to which part vii. of this Act applies without having obtained any licence required by that part of this Act or makes default in observing any of the conditions contained in such licence ;

shall be liable to a penalty (*m*) not exceeding twenty pounds a day during every day of the continuance of the non-compliance with the order of the court in reference to the matters aforesaid :

(4) Every person who hinders or obstructs any persons empowered by this Act to enter and remain on any premises for the purpose of executing and to execute any work authorised or directed to be done under this Act or wilfully damages or injures any such work shall be liable for every such offence to a penalty not exceeding ten pounds : Obstructing persons empowered to enter premises.

(5) Every person who being a building owner liable under part viii. of this Act to make good any damage which he may occasion to the adjoining owners' or adjoining occupiers' property by any works authorised to be executed by the building owner or to do any other thing upon condition of doing which his right to execute such works is by part viii. of this Act declared to arise fails within a reasonable time to make good such damage or to do such thing shall be liable to a penalty not exceeding twenty pounds and to a daily penalty not exceeding the like amount : Failing to make good damage caused by works on party structures.

(6) Every person who refuses to admit the purchaser of any materials sold under this Act (*n*) his servants or agents upon the land on which the same are at a reasonable hour or impedes him or them in removing the same therefrom at a reasonable hour shall be liable to a penalty not exceeding ten pounds and to a daily penalty not exceeding five pounds : Refusing to admit purchasers of materials sold under Act.

(*m*) **Liable to penalty.** This liability is in addition to the power of the County Council to obtain a magistrate's order for the demolition or alteration of such building or structure under sec. 170, *ante*.

(*n*) **Materials sold under this Act.** See secs. 83, 109, 115, and 170, *ante*.

57 & 58 Vict. ch. ccxiii.

Erections within fifty feet of dangerous or noxious business.

(7) Every person who erects a building nearer than fifty feet to a building used for any dangerous business or a dwelling-house nearer than fifty feet to a building used for any noxious business (*o*) shall be liable to a penalty not exceeding fifty pounds and to a daily penalty not exceeding the like amount for every day during which such first-mentioned building or such dwelling-house shall be allowed to so remain near to such dangerous or noxious business:

Dangerous or noxious business in contravention of Act.

(8) Every person who establishes or carries on a dangerous or noxious business in contravention of any of the provisions of this Act (*o*) shall be liable to a penalty not exceeding fifty pounds and to a daily penalty not exceeding the like amount:

Erecting dwellings on low-lying land.

(9) Every person who erects or adapts or commences to erect or adapt otherwise than in accordance with the provisions of part xi. of this Act any building to which part xi. of this Act relates shall be liable to a penalty (*p*) not exceeding one hundred pounds and to a daily penalty not exceeding fifty pounds for every day after the conviction for the offence on which the building continues so erected or adapted without a licence or on which default is made in observing or complying with any conditions of a licence under that part of this Act:

Non-compliance with council's conditions.

(10) Every person not complying with any term or condition imposed by the council under the section the marginal note of which is "Power for council to annex conditions" (*q*) shall be liable to a penalty not exceeding ten pounds:

Sky signs.

(11) (a) Any person who places erects or retains or suffers or permits to be placed erected or retained any sky sign contrary to the provisions of this Act (*r*); or

Offences relating to building notices.

(b) Being a person who ought to serve a building notice (*s*) fails to do so or begins to execute a work respecting which he ought to serve a building notice before serving such notice or having served a building notice begins to execute the work to which it relates before the expiration of two clear days after the notice has ceased to operate; or

Obstructing district surveyor.

(c) Refuses to permit any district surveyor at a reasonable time to enter survey or inspect any building work or premises which such surveyor is by this Act authorised to enter and inspect (*t*) or refuses or neglects to afford him all reasonable assistance in such inspection; or

Non-compliance with order of county court.

(d) Fails to comply with any order of the county court made in pursuance of this Act (*u*) within the time named in such order; or

Obstructing builder under order of county court.

(e) Refuses to admit at a reasonable time a builder to a building or otherwise prevents a builder from complying with any order of the county court made in pursuance of this Act (*u*); or

Contravention of Act by workmen, &c.

(f) (Being a workman labourer servant or other person employed in or about any building) wilfully and without the privity or consent of the person causing the work to be done does anything in or about such building contrary to the provisions of this Act; or

Obstructing persons complying with notice or order.

(g) Refuses to admit at a reasonable time any owner builder (*x*) or

(*o*) **Dangerous or noxious business.** See secs. 118—121, *ante*.
(*p*) **Penalty for building on low-lying lands.** See note (*m*) on page 473.
(*q*) **Power for Council to annex conditions.** See sec. 190, *ante*.
(*r*) **Sky sign.** See secs. 125—135, *ante*.
(*s*) **Building notice.** See sec. 145, *ante*.
(*t*) **District surveyor authorised to enter and inspect.** See secs. 103, 126, 138, and 148, *ante*.
(*u*) **Order of county court.** See secs. 91, 94, and 168, *ante*.
(*x*) **Owner; builder.** Defined by sec. 5, sub-secs. (29) and (33), *ante*.

person or his servants workmen or agents into any land building or structure for the purpose of complying with any notice or order served or made on him in pursuance of this Act in respect of such land building or structure or refuses or neglects to afford them all reasonable assistance in complying with such notice or executing such order; or 57 & 58 Vict. ch. ccxiii.

(h) Acts in any manner in contravention of any of the provisions of this Act relating to the storing of wood and timber (*y*); or Illegal storing of wood.

(j) Does any other thing prohibited by this Act or fails neglects or omits to do any other thing which he is required to do under or in pursuance of this Act; Other things prohibited.

shall be liable to a penalty not exceeding forty shillings and to a daily penalty not exceeding the like amount:

(12) Every person who without the consent of the council converts or uses a building contrary to any of the provisions of the section of this Act of which the marginal note is "Rules as to conversion of buildings" (*z*) shall be liable to a penalty not exceeding ten pounds and to a daily penalty not exceeding the like amount for every day on which the building remains so converted or is used contrary to the provisions of the said section. Conversion of buildings contrary to Act.

The liability to these penalties shall be without prejudice to any other proceedings whether under this Act or any byelaw under this Act or otherwise but so that no person shall be punished twice for the same offence.

Application of Act.

201. The following buildings and works shall be exempt from the operation of parts vi. and vii. of this Act:— Buildings exempt from parts of Act.

(1) Bridges piers jetties embankment walls retaining walls and wharf or quay walls: Bridges &c.

(2) The Mansion House Guildhall and Royal Exchange of the City: Mansion House &c.

(3) The offices and buildings of the Bank of England within the City: Bank of England.

(4) All buildings erected before or after the passing of this Act by or with the sanction of the commissioners for the Exhibition of 1851 on any lands belonging to them and purchased in pursuance of any power vested in them by charter or Act of Parliament except streets or blocks of buildings erected by them or with their sanction as private dwelling-houses: Commissioners for the Exhibition of 1851.

(5) The sessions house at the Old Bailey and all other sessions houses or other public buildings belonging to or occupied for public purposes by the justices of the peace of the counties of Middlesex London and the City of London or by the county councils of London and Middlesex respectively: Sessions houses and county buildings.

(6) The erections and buildings authorised by an Act passed in the ninth year of the reign of his late Majesty King George the Fourth for the purposes of a market in Covent Garden (*a*): Covent Garden market.

(7) The buildings of the Metropolitan Cattle Market and of the Cattle Market at Deptford and any building within the market premises inhabited or adapted to be inhabited by any official or servant of the corporation for the purposes of such markets or either of them: Cattle markets.

(*y*) **Storing of wood or timber.** See sec. 197, *ante*.
(*z*) **Rules as to conversion of buildings.** See sec. 211, *post*.
(*a*) **Market in Covent Garden.** See 9 Geo. 4, ch. cxiii.

57 & 58 Vict. ch. ccxiii.

(8) Any building or part of a building belonging to a canal company and used exclusively for the purposes of canal works (*b*) under any Act of Parliament;

Canal buildings.

Any building or structure situate upon the railway or within the railway or station premises and used for the purposes of or in connexion with the traffic of a railway company (*c*);

Railway buildings.

Gasworks.

Any building or part of a building belonging to a gas company and used exclusively for gasworks;

Thames conservancy.

Any building or part of a building belonging to the conservators of the River Thames (*d*) and used by them as a workshop or store;

Railway buildings.

The foundations and walls of buildings belonging to a railway company situate over any station or works of a railway company or immediately adjoining any railway or works of a railway company and upon land acquired under the powers of an Act of Parliament;

Any building within the station premises of any railway company inhabited or adapted to be inhabited in whole or in part by any official or servant of the railway company:

Provided always that nothing in this sub-section shall exempt any other buildings used for the purpose of human habitation (*e*) so far as they are so used:

Dock buildings.

(9) Any building or structure or part of a building or structure belonging to a dock company constituted by Act of Parliament and situate within the dock premises:

Certain buildings not exceeding five feet in height.

(10) Buildings not exceeding in area (*f*) thirty square feet and not exceeding in height five feet in any part measured from the level of the ground (*f*) to the under side of the eaves or roof plate and distant at least five feet (*g*) from any other building and from any street (*f*) and not having therein any stove flue fireplace hot air pipe hot water pipe or other apparatus for warming or ventilating the same provided that no portion of the building extends beyond the general line of buildings in any street:

Certain buildings distant eight feet from street.

(11) All buildings and structures (not exceeding in height (*h*) thirty feet as measured from the footings of the walls and not exceeding in extent one hundred and twenty-five thousand cubic feet (*h*) and not being public buildings) (*h*) wholly in one occupation and distant at the least eight feet (*g*) from the nearest street or way (*h*) and at the least thirty feet from the nearest buildings and from the land of any adjoining owner (*h*) A detached dwelling-house shall not be excluded

(*b*) **Purposes of canal works.** Where a canal company put up a building upon one of their wharves, and let the wharf and building to an institution for distributing firewood, it was held that the building was not "used for the purposes of the canal" within the meaning of the repealed Met. Bldg. Act, 1855, sec. 6. *Coole* v. *Lovegrove* (1893), 2 Q. B. 44; 62 L. J. M. C. 153. See also *Manchester, Sheffield and Lincolnshire Ry. Co.* v. *Barnsley Union (Guardians of)*, *ante*, p. 404.

(*c*) **Purposes of a railway company.** See note to sec. 13 (6), *ante*.

(*d*) **Conservators of River Thames.** See note to sec. 3 (xiii) of the Loc. Govt. Act, 1888, *ante*.

(*e*) **Other buildings for human habitation.** See sec. 81, *ante*.

(*f*) **Area; level of the ground; street.** Defined by sec. 5, sub-secs. (22), (8), and (1), *ante*.

(*g*) **Distant . . . feet,** i.e., measured in a straight line on a horizontal plane. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 34.

(*h*) **Height; cubical extent; public buildings; street; way; adjoining owner; dwelling-house.** Defined by sec. 5, sub-secs. (21), (24), (27), (1), (2), (32), and (25), respectively, *ante*.

from this exemption solely by reason of its being within thirty feet of another detached building constructed as stables or offices to be used in connexion with such dwelling-house :

Certain buildings distant thirty feet from street.

(12) All buildings not exceeding in extent two hundred and fifty thousand cubic feet and not being public buildings and distant at the least thirty feet (*i*) from the nearest street or way and at the least sixty feet from the nearest buildings and from the land of an adjoining owner A detached dwelling-house shall not be excluded from this exemption solely by reason of its being within sixty feet of another detached building constructed as stables or offices to be used in connexion with such dwelling-house :

Certain party fence walls.

(13) All party fence walls (*k*) not exceeding in height seven feet measured from the top of the footings of the walls :

Greenhouses.

(14) Greenhouses if not attached to other buildings :

(15) Greenhouses if attached to other buildings so far as regards the necessary woodwork of the sashes doors and frames :

Window plant cases.

(16) Cases of metal and glass used solely for holding plants fastened to the woodwork of the sill and lower sash of a window provided that no portion project over the public way or more than twelve inches beyond the external face of the wall of the building :

Certain openings for ventilating valves.

(17) Openings made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than forty square inches if such valves are not nearer than twelve inches to any timber or other combustible material.

Additions to buildings in sub-secs. (10) (11) or (12) beyond limits specified not exempt.

If any addition be made to any building or structure specified in sub-sections (10) (11) or (12) whereby any increase is caused in the area height or extent of any such building or structure beyond the area height or extent mentioned in the sub-section in which any such building or structure is specified the council may give notice to the owner or occupier (*l*) of such building or structure either to remove such addition or to make the building so increased in height or extent conform with all or any of the provisions of this Act and with any byelaws under this Act relating to the construction of buildings and upon his failing to do so within fourteen days from (*m*) the service upon him of such notice the council may remove such addition to the building or structure and may recover the expenses of such removal from the owner or occupier so making default in a summary manner (*n*).

Exemption of Government buildings.

202. There shall be exempted from so much of the provisions of this Act as relates to buildings and structures—

Every building structure or work vested in and in the occupation of Her Majesty her heirs and successors either beneficially or as part of the hereditary revenues of the Crown or in trust for the pubilc service or for public services ; also

Any building structure or work vested in and in the occupation of any department of Her Majesty's Government (*o*) or of the metropolitan

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(*i*) **Distant . . . feet.** See note (*g*) on page 476.
(*k*) **Party fence wall.** Defined by sec. 5 (18), *ante*.
(*l*) **Owner ; occupier.** Defined by sec. 5, sub-secs. (29) and (30), *ante*.
(*m*) **Within fourteen days from.** See note to sec. 24, *ante*.
(*n*) **Summary manner.** See sec. 166, *ante*.
(*o*) **Government buildings.** A building erected for the custody of the arms and stores of militia was held to be exempt under the repealed Met. Bldg. Act, 1855,

57 & 58 Vict. ch. ccxiii.

police or of the trustees of the British Museum for public purposes or for the public service; also

Any building structure or work vested in and occupied for the service of the Duke of Cornwall for the time being.

As to buildings for the supply of electricity.

203. Where a local authority or a company has statutory powers for the supply of electricity in any metropolitan district the buildings of such local authority or company used as a generating station or for works shall be deemed to be special buildings, to which the general provisions of parts v. vi. and vii. and the first and second schedules of this Act do not apply and plans thereof shall be submitted to the council for their approval and the council shall have power to authorise the buildings to be erected of greater dimensions than two hundred and fifty thousand cubic feet and in other respects to exempt such buildings from any of the provisions of this Act if they think fit.

Exempting lands buildings and property of Inns of Court.

204. The lands buildings and property of—

(1) The Honourable Society of the Inner Temple;
(2) The Honourable Society of the Middle Temple;
(3) The Honourable Society of Lincoln's Inn;
(4) The Honourable Society of Gray's Inn;

herein called "the Inns of Court," shall be exempt from the operation of this Act Provided that in respect of any building structure or land which abuts upon any public street public place or public way the Inns of Court shall be subject to the provisions of part iii. of this Act (Lines of Building Frontage).

Saving existing rights of gas companies.

205. In addition to any exemption referring to gas companies contained in this Act nothing in this Act contained shall in any way take away alter prejudice or affect any of the powers rights and privileges conferred upon a gas company by any Act of Parliament and as existing immediately before the passing of this Act (*p*).

Duration of exemption.

206. Any building structure or work in any respect exempt from the operation of this Act or in any manner privileged in respect of any provision of this Act shall remain so exempt or privileged so long only as it is used for the purpose or retains the character by reason whereof it is so exempt or privileged.

Buildings not to be altered so as not to conform to Act.

207. It shall not be lawful (unless with the consent of the council) to make any alteration of any building in such manner that when so altered it will by reason of such alteration not be in conformity with the provisions of this Act applicable to new buildings.

When remainder of party wall &c. to be taken down.

208. Unless in any case the council otherwise allow where a party wall or external wall (*q*) not in conformity with this Act has been taken down burnt or destroyed to the extent of one-half thereof (measured in superficial feet) every remaining portion of the old wall not in conformity

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sec. 6. *Reg.* v. *Jay*, 8 E. & B. 469; 27 L. J. M. C. 25. Premises occupied by a volunteer corps for the purpose of the service of the corps would also appear to fall within the exemption. *Pearson* v. *Holborn Union Assessment Committee* (1893). 1 Q. B. 389; 62 L. J. M. C. 77.

(*p*) **Exemptions referring to gas companies.** See secs. 75, 121, and 201 (8), *ante*. As to the interpretation of conflicting provisions in general and special Acts, see note to sec. 126 of the Loc. Govt. Act, 1888, *ante*.

(*q*) **Party wall; external wall.** Defined by sec. 5, sub-secs. (16) and (15), *ante*.

with this Act shall either be made to conform therewith or be taken down before the rebuilding thereof. 57 & 58 Vict. ch. ccxiii.

Additions to and alterations of buildings.

209. Every addition to or alteration of a building and any other work made or done for any purpose in to or upon a building (*r*) (except that of necessary repair not affecting the construction of any external or party wall) (*s*) shall so far as regards such addition or alteration or other work be subject to the provisions of this Act and of byelaws thereunder relating to new buildings.

Application of Act to buildings erected before commencement of Act.

210. A building structure or work erected or constructed before the commencement of this Act to which no objection could have been taken under any law then in force (*t*) shall (subject to the provisions of this Act as to new buildings or the alteration of buildings) be deemed to be erected or constructed in compliance with the provisions of this Act.

Rules as to conversion of buildings.

211. Unless in any case the council otherwise allow no person shall—

(1) convert into or use as a dwelling-house (*u*) any building or part of a building not originally constructed for human habitation;

(2) convert into one dwelling-house two or more dwelling-houses constructed originally as separate dwelling-houses;

(3) convert into or use as two or more dwelling-houses any building constructed originally as one dwelling-house;

(4) convert a building which when originally erected was legally exempt from the operation of any building enactments or byelaws in force within London into a building which had it been originally erected in its converted form would have been within the operation of these enactments or byelaws;

(5) re-convert into or use as a dwelling-house any building which has been discontinued as or appropriated for any purpose other than a dwelling-house;

(6) convert into or use as a dwelling-room or part of a dwelling-room any room or part of a room used as a shop; or

(7) convert a dwelling-house or any part of a dwelling-house into a shop;

in such manner that the building or part of a building so converted as aforesaid when converted will not be in conformity with the provisions of this Act relating to the class of buildings to which the building when so converted will belong.

Buildings in progress.

212. Notwithstanding anything contained in this Act a building structure or work which has been commenced before and is in progress at the commencement of this Act or which is to be carried out under any

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(*r*) **Every addition or alteration.** The corresponding provision of the repealed Met. Bldg. Act, 1855, sec. 9, was held not to apply to alterations or additions to buildings which were exempt from the operation of the Act. *North Kent Rly. Co.* v. *Badger*, 8 E. & B. 728; 27 L. J. M. C. 106.

(*s*) **Necessary repair not affecting construction, &c.** Repairs which consisted in replacing the frame of an entrance door and part of the brickwork on each side of it, the opening of the doorway being rather contracted, but the external wall not being altered in any other respect, were held, under the repealed Met. Bldg. Act, 1855, sec. 9, to be "work done for necessary repairs not affecting the construction of any external or party wall." *Badger* v. *Denn*, 22 J. P. 129.

(*t*) **Any law then in force.** See the Acts repealed by the present Act, secs. 214 and 215, and sched. 4, *post*.

(*u*) **Dwelling-house** is defined by sec. 5 (25), *ante*.

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contract (*x*) entered into before the passing of this Act may be completed subject to and in accordance with the provisions of the Acts relating thereto as in force immediately previous to the passing of this Act.

Saving powers of local authorities.

213. Nothing in this Act shall take away or interfere with the powers of the local authorities with respect to the paving of new streets under the Metropolis Management Acts (*y*).

Repeal.

Repeal of sec. 50 of Metropolitan Railway Act, 1866.

214. Section 50 of the Metropolitan Railway (Additional Powers) Act 1866 is hereby repealed (*z*).

Repeal of enactments in schedule.

215. (1) The Acts mentioned in the fourth schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(2) This appeal shall not affect—

(a) The past operation of any enactment hereby repealed nor anything duly done or suffered under any enactment hereby repealed; or

(b) Any right privilege obligation or liability acquired accrued or incurred under or in accordance with any enactment hereby repealed; or

(c) Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(d) Any power investigation legal proceeding or remedy in respect of any such right privilege obligation liability penalty forfeiture or punishment as aforesaid and any such power investigation legal proceeding and remedy may be exercised and carried on as if this Act had not passed; or

(e) Any of the powers privileges exemptions jurisdictions or authorities given to or vested in the commissioners of sewers (*a*) by or under any Act of Parliament and existing immediately before the passing of this Act.

Byelaws &c. under repealed Acts to remain in force.

216. All byelaws regulations orders consents conditions and notices duly made given imposed or issued under any Act hereby repealed shall so far as applicable for the purposes of this Act be of the same validity and effect as if they had been made given imposed or issued under this Act And all such byelaws and regulations shall remain in force until the same shall be revoked altered or varied by byelaws duly made under the provisions of this Act (*b*).

(*x*) **Any contract.** This section applies not merely to buildings to be erected under a contract with a builder according to definite plans and specifications, but also to buildings to be erected under a building agreement for the development of a building estate, the complete performance of which may extend over a period of years. *Tanner* v. *Oldman* (1896), 1 Q. B. 60; 65 L. J. M. C. 10.

(*y*) **Metropolis Management Acts.** *Ante.*

(*z*) **The Metropolitan Railway (Additional Powers) Act, 1866** (29 & 30 Vict. ch. clx.), sec. 50, extended the exemptions from the operation of the Metropolitan Building Acts in relation to railways and stations, to buildings over stations, and works of the company.

(*a*) **Commissioners of Sewers.** Defined by sec. 5 (46), *ante.*

(*b*) **Byelaws.** Sec. 164, *ante*, empowers the County Council to make byelaws for the purposes of this Act. Up to the date of the publication of the present work they had not exercised their power, and the byelaws of the Met. Bd. Wks. and the County Council made under the repealed Acts therefore still remain in force. The plans of certain proposed new streets and houses were approved by an urban district authority under their then existing byelaws, and some of the houses were built in accordance

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217. Officers appointed under any enactment hereby repealed shall continue in office in like manner as if this Act had not been passed (*c*).

Saving for existing officers.

References in Acts or documents to repealed Acts to be read as referring to this Act.

218. Where in any Act or document any Act or any provisions of any Act are mentioned or referred to which are repealed by this Act such Act or document shall with any necessary modifications and so far only as the circumstances of the case admit be read as if this Act or the corresponding provisions of this Act were therein mentioned or referred to instead of such repealed provisions.

SCHEDULES.

THE FIRST SCHEDULE.

PRELIMINARY.

Parts i. and ii. of this schedule apply to walls built of bricks not of less than eight and a half inches long or of stone or other blocks of hard and incombustible substance the beds or courses being horizontal.

Structure of buildings.

1. Every building unless otherwise sanctioned in accordance with this Act shall be enclosed with walls constructed of brick stone or other hard and incombustible substances (*d*) and the footings shall rest on the solid ground or upon concrete or upon other solid substructure Provided that open sheds not exceeding sixteen feet in height and not exceeding four squares in area may be constructed of any substances and in any manner approved by the district surveyor.

Construction of walls of brick stone &c.

2. Every wall constructed of brick stone or other similar substances shall be properly bonded and solidly put together with mortar or cement and no part of such wall shall overhang any part underneath it except to the extent of six inches and provided that the projection be well and solidly corbelled out and that the side of the wall opposite to the corbelling be carried up vertically in continuation of the inner face thereof And all return walls shall be properly bonded together.

Extra thickness of certain walls.

3. The thickness of every wall not being built of bricks or stones or other hard and incombustible substances laid in horizontal beds or courses shall be one-third greater than the thickness prescribed in parts i. and ii. of this schedule.

Thickness of walls built of materials other than such bricks &c. as aforesaid.

4. The thickness of any wall of a dwelling-house if built of materials other than those before specified shall be deemed to be sufficient if made of the thickness required by parts i. and ii. of this schedule or of such thickness as may be approved by the council.

Hollow walls.

5. When hollow walls are constructed there shall be a wall on one side of the hollow space of the full thickness prescribed by this Act.

6. The heights of the storeys shall be measured as follows:—

Height of storey.

(a) The height of a topmost storey (*e*) shall be measured from the level of the underside of its floor joists up to the level of the under surface of the tie of the roof or other covering or if there is no tie then up to the level of half the vertical height of the rafters or other support of the roof;

(b) The height of every storey other than a topmost storey shall be measured from the level of the underside of the floor joists of the storey up to the level of the underside of the floor joists of the storey next above it.

Height of external and party walls.

7. For the purpose of determining the thickness of a wall the height of such wall shall be measured from the base of the wall to the top of the topmost storey (*e*) whether such wall is carried to the full height or not or in case of a gable when there are no storeys in the roof to half the height of the gable.

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therewith. These byelaws were afterwards revoked, and new ones issued, subsequent to which the owner commenced to build some more of the houses. *Held*, that he was entitled to proceed according to the plans approved under the old byelaws. *Withington Urban Dist. Counc.* v. *Moore*, 60 J. P. 408.

(*c*) **Existing officers.** As to district surveyors, see sec. 139, *ante*.

(*d*) **Incombustible substances.** See note to sec. 61 (1), *ante*.

(*e*) **Topmost storey** is defined by sec. 5 (14), *ante*.

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Length of walls.

8. Walls are deemed to be divided into distinct lengths by return walls and the length of every wall is measured from the centre of one return wall to the centre of another provided that such return walls are external party or cross walls (*f*) of the thickness required under this schedule and bonded into the walls so deemed to be divided.

Footings of walls.

9. Unless with the consent of the council every wall other than a wall carried on a bressummer (*g*) shall have footings :—

The projection of the bottom of the footing of every wall on each side of the wall shall be at least equal to one-half of the thickness of the wall at its base unless an adjoining wall interferes in which case the projection may be omitted where that wall adjoins and the diminution of the footing of every wall shall be formed in regular offsets and the height from the bottom of such footing to the base of the wall shall be at the least equal to two-thirds of the thickness of the wall at its base (*g*).

Underpinning.

10. The underpinning of walls and chimneys shall be built with brick or stone bedded in cement to the full thickness of the old wall or work and with proper footings or to an additional thickness if the increased height of the wall so requires and shall rest on the solid ground or on concrete or on other solid substructure as a foundation and the whole shall be executed to the satisfaction of the district surveyor.

Thickening of walls.

11. A wall shall not be thickened except after notice served on the district surveyor of the intention to thicken and the thickening shall be executed with brick or stone work in cement properly bonded to the old work to the satisfaction of the district surveyor.

PART I.—BUILDINGS NOT PUBLIC AND NOT OF THE WAREHOUSE CLASS (*h*).

External and party walls (*i*) shall be of not less thickness than the thickness hereinafter specified in each case viz. :—

1. When the wall does not exceed twenty-five feet in height its thickness shall be as follows :—

If the wall does not exceed thirty feet in length and does not comprise more than two storeys it shall be eight and a half inches thick for its whole height ;

If the wall exceeds thirty feet in length or comprises more than two storeys it shall be thirteen inches thick below the topmost storey (*k*) and eight and a half inches thick for the rest of its height.

2. Where the wall exceeds twenty-five feet but does not exceed forty feet in height its thickness shall be as follows :—

If the wall does not exceed thirty-five feet in length it shall be thirteen inches thick below the topmost storey and eight and a half inches thick for the rest of its height ;

If the wall exceeds thirty-five feet in length it shall be seventeen and a half inches thick for the height of one storey then thirteen inches thick for the rest of its height below the topmost storey and eight and a half inches thick for the rest of its height.

3. When the wall exceeds forty feet but does not exceed fifty feet in height its thickness shall be as follows :—

If the wall does not exceed thirty feet in length it shall be seventeen and a half inches thick for the height of one storey then thirteen inches thick for the rest of its height below the topmost storey and eight and a half inches thick for the rest of its height ;

If the wall exceeds thirty feet but does not exceed forty-five feet in length it shall be seventeen and a half inches thick for the height of two storeys then thirteen inches thick for the rest of its height ;

(*f*) **External, party, or cross walls.** Defined by sec. 5 and sub-secs. (15), (16), and (17), *ante*.

(*g*) **Bressummer ; base of wall.** Defined by sec. 5, sub-secs. (7) and (10), *ante*.

(*h*) **Public buildings ; buildings of the warehouse class.** Defined by sec. 5, sub-secs. (27) and (28), *ante*.

(*i*) **External walls ; party walls.** Defined by sec. 5, sub-secs. (15) and (16), *ante*.

(*k*) **Topmost storey** is defined by sec. 5 (14), *ante*.

If the wall exceeds forty-five feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next storey and then thirteen inches thick for the rest of its height.

4. Where the wall exceeds fifty feet but does not exceed sixty feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be seventeen and a half inches thick for the height of two storeys and thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next two storeys and then thirteen inches thick for the rest of its height.

5. Where the wall exceeds sixty feet but does not exceed seventy feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next two storeys and then thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

6. Where the wall exceeds seventy feet but does not exceed eighty feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick for the height of one storey then seventeen and a half inches thick for the height of the next three storeys and thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

7. Where the wall exceeds eighty feet but does not exceed ninety feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be twenty-six inches thick for the height of one storey then twenty-one inches and a half thick for the height of the next storey then seventeen and a half inches thick for the height of the next three storeys and then thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

8. Where the wall exceeds ninety feet but does not exceed one hundred feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be twenty-six inches thick for the height of one storey then twenty-one inches and a half thick for the height of the next two storeys then seventeen and a half inches thick for the height of the next three storeys and then thirteen inches thick for the rest of its height:

If the wall exceeds forty-five feet in length it shall be increased in thickness in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

9. Where the wall exceeds one hundred feet but does not exceed one hundred and twenty feet in height its thickness shall be as follows:—

If the wall does not exceed forty-five feet in length it shall be thirty inches thick for the height of one storey then twenty-six inches thick for the height of the next two storeys then twenty-one inches and a half thick for the height of the next two storeys then seventeen and a half inches thick for the height of the next three storeys and then thirteen inches thick for the rest of its height;

If the wall exceeds forty-five feet in length it shall be increased in thickness

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in each of the storeys below the uppermost two storeys by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

Condition in respect of storeys exceeding certain height.

10. If any storey exceeds in height sixteen times the thickness prescribed under this schedule for the walls of such storey the thickness of each external and party wall throughout such storey shall be increased to one sixteenth part of the height of the storey and the thickness of each external and party wall below that storey shall be increased to a like extent but any such additional thickness may be confined to piers properly distributed of which the collective width amount to one fourth part of the length of the wall.

Restriction in case of certain storeys.

11. No storey enclosed with walls less than thirteen inches in thickness shall be more than ten feet in height between the floor and the ceiling thereof or between the floor and the tie of the roof.

Rule as to buildings not being public buildings or buildings of the warehouse class.

12. All buildings excepting public buildings and such buildings as are in this Act defined to be buildings of the warehouse class shall as respects the thickness of their walls be subject to the provisions contained in this part of this schedule.

PART II.—BUILDINGS OF THE WAREHOUSE CLASS (*l*).

Thickness at base.

The external and party walls of buildings of the warehouse class shall at the base be made of not less thickness than the thickness hereinafter specified in each case viz. :—

1. Where the wall does not exceed twenty-five feet in height (whatever is its length) it shall be thirteen inches thick at its base.

2. Where the wall exceeds twenty-five feet but does not exceed thirty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be thirteen inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be seventeen and a half inches thick at its base.

3. Where the wall exceeds thirty feet but does not exceed forty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed thirty-five feet in length it shall be thirteen inches thick at its base ;

If the wall exceeds thirty-five feet but does not exceed forty-five feet in length it shall be seventeen and a half inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be twenty-one inches and a half thick at its base.

4. Where the wall exceeds forty feet but does not exceed fifty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed thirty feet in length it shall be seventeen and a half inches thick at its base ;

If the wall exceeds thirty feet but does not exceed forty-five feet in length it shall be twenty-one inches and a half thick at its base ;

If the wall exceeds forty-five feet in length it shall be twenty-six inches thick at its base.

5. Where the wall exceeds fifty feet but does not exceed sixty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick at its base ;

If the wall exceeds forty-five feet in length it shall be twenty-six inches thick at its base.

6. Where the wall exceeds sixty feet but does not exceed seventy feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

(*l*) **Buildings of the warehouse class.** Defined by sec. 5 (28), *ante*.

7. Where the wall exceeds seventy feet but does not exceed eighty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be twenty-one inches and a half thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

8. Where the wall exceeds eighty feet but does not exceed ninety feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be twenty-six inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

9. Where the wall exceeds ninety feet but does not exceed one hundred feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be twenty-six inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

10. Where the wall exceeds one hundred feet but does not exceed one hundred and twenty feet in height it shall be at its base of the thickness following :—

If the wall does not exceed forty-five feet in length it shall be thirty-one inches thick at its base ;

If the wall exceeds forty-five feet in length it shall be increased in thickness from the base up to within sixteen feet from the top of the wall by four inches and a half (subject to the provision in this schedule respecting distribution in piers).

11. The thickness of the wall at the top and for sixteen feet below the top shall be thirteen inches and a half and the intermediate parts of the wall between the base and sixteen feet below the top shall not be of less thickness than would be the case if the wall were to be built solid throughout the space between straight lines drawn on each side of the wall and joining the thickness at the base to the thickness at sixteen feet below the top :

Nevertheless in walls not exceeding thirty feet in height the walls of the topmost storey may be nine inches thick provided the height of that storey does not exceed ten feet.

Condition in respect of storeys exceeding a certain height.

12. If in any storey of a building of the warehouse class the thickness of the wall as determined by the provisions of this schedule is less than one fourteenth part of the height of such storey the thickness of the wall shall be increased to one fourteenth part of the height of the storey and the thickness of each external and party wall below that storey shall be increased to a like extent but any such additional thickness may be confined to piers properly distributed of which the collective widths amount to one fourth part of the length of the wall.

Thickness of walls built of materials other than such bricks &c. as aforesaid.

13. The thickness of any wall of a building of the warehouse class if built of materials other than those before specified shall be deemed to be sufficient if made of the thickness required by the provisions of this schedule or of such other thickness as may be approved by the council.

MISCELLANEOUS.

Cross-walls.

1. The thickness of a cross-wall shall be two-thirds of the thickness hereinbefore required for an external or party wall of the same dimensions and belonging to the same class of buildings but never less than eight and a half inches and no wall subdividing any building shall be deemed to be a cross-wall unless it is carried up to the floor of the topmost storey and unless in each storey the aggregate extent of the vertical faces or elevations of all the recesses and that of all the openings therein taken together does not exceed one-half of the whole extent of the vertical face or elevation of the wall.

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2. Wherever a cross-wall becomes in any part an external wall such cross-wall shall be of the thickness required for an external wall of the same height and length and belonging to the same class of buildings.

3. Where an increase of thickness is by any rule of part i. or part ii. of this schedule required in case of a wall exceeding sixty feet in height and forty-five feet in length or in case of a storey exceeding in height sixteen times or fourteen times (as the case may be) the thickness prescribed for its walls or in case of a wall below such storey the increased thickness may be confined to piers properly distributed of which the collective widths amount to one fourth part of the length of the wall.

THE SECOND SCHEDULE.

The following materials shall for the purposes of this Act be deemed to be fire-resisting materials:—

(1) Brickwork constructed of good bricks well burnt hard and sound properly bonded and solidly put together—

(a) With good mortar compounded of good lime and sharp clean sand hard clean broken brick broken flint grit or slag; or

(b) With good cement; or

(c) With cement mixed with sharp clean sand hard clean broken brick broken flint grit or slag:

(2) Granite and other stone suitable for building purposes by reason of its solidity and durability:

(3) Iron steel and copper:

(4) Oak and teak and other hard timber when used for beams or posts or in combination with iron the timber and the iron (if any) being protected by plastering in cement or other incombustible or non-conducting external coating;

In the case of doors—

oak or teak or other hard timber not less than two inches thick;

In the case of staircases—

oak or teak or other hard timber with treads strings and risers not less than two inches thick:

(5) Slate tiles brick and terra cotta when used for coverings or corbels:

(6) Flagstones when used for floors over arches but not exposed on the underside and not supported at the ends only:

(7) Concrete composed of broken brick stone chippings or ballast and lime cement or calcined gypsum when used for filling in between joists of floors:

(8) Any material from time to time approved by the council as fire-resisting.

THE THIRD SCHEDULE.

FEES PAYABLE TO DISTRICT SURVEYORS (*m*).

PART I.—ON NEW BUILDINGS (*n*).

	£	*s.*	*d.*
For any building not exceeding thirty square feet in area (*o*) and not exceeding ten feet in height (*o*)	0	10	0
For every building not exceeding four hundred square feet in area and not more than two storeys in height	1	10	0
For every additional storey	0	5	0
For every additional square or fraction of a square	0	2	6
For every building not exceeding four hundred square feet in area and of one storey only in height	0	15	0

(*m*) **Fees payable to district surveyors.** The fees prescribed under parts i. and iii. of this schedule may be reduced but not increased by the County Council. Sec. 154 (1), *ante*.

(*n*) **New building** is defined by sec. 5 (6), *ante*.

(*o*) **Area; height.** Defined by sec. 5 (22) and (21), *ante*. As to the area of out-buildings, see regulation 5, at the end of this schedule.

On Additions Alterations or other Works.

	£	s.	d.
For every addition or alteration or other work to which the provisions of this Act apply made or done to or on any building after the roof thereof has been covered in one-half of the fee charged in the case of a new building calculated upon the area of the whole building.			
For inspecting the arches or fire-resisting floors over or under public ways (*p*)	0	10	0
For inspecting the formation of openings in party walls (for each opening)	0	10	0
For inspecting the closing of openings in party walls (for each opening)	0	10	0

Provided that in the case of public buildings buildings constructed of concrete and buildings divided into separate sets of chambers or tenements by party structures the fees hereinbefore specified in this part of this schedule shall in every case be increased by one-half (*q*).

On Chimneys and Flues.

	£	s.	d.
On the construction of a furnace chimney-shaft or similar shaft for ventilation or other purposes in addition to the fee for any other operation in progress at the same time if not exceeding seventy-five feet in height	2	0	0
If exceeding seventy-five and not exceeding one hundred feet in height	2	10	0
For every additional ten feet or portion of ten feet in height ..	0	10	0
On the carrying of a flue from an oven stove steam-boiler furnace or close-fire into an old flue	0	10	0
On certifying that a chimney breast in a party wall may be cut away	0	10	0

On Certifying Plans.

	£	s.	d.
For examining and certifying plans of an old building	2	2	0

On Wooden and Temporary Structures.

On inspection of any wooden structure or on inspection of any structure or erection put up on any public occasion the same amount as for a new building calculated on the area of the structure or erection without reference to the area of any building to which it may be attached or in or on which it may be put up.

Attending at Court.

	£	s.	d.
For attending at a court when an order is made for complying with notice of irregularity	0	10	0

(*p*) **Arches over or under public ways.** Where a builder was employed to construct a series of arches for cellars under a public street, for the use of houses to be built on the adjoining land, it was held under the repealed Met. Bldg. Act, 1855, sec. 49, that the district surveyor was entitled to his fee in respect of each distinct building to which any given number of arches was to be appropriated. *Power* v. *Wigmore*, L. R. 7 C. P. 386 ; 36 J. P. 694.

(*q*) **Separate sets of chambers.** Under the repealed Metropolitan Building Act, 1855, secs. 49, 51, and sched. 2, part i., where a building was divided into fourteen separate sets of chambers, it was held that the district surveyor was entitled to one fee only in respect of the entire structure. *Moir* v. *Williams* (1892), 1 Q. B. 264 ; 61 L J. M. C. 33.

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PART II.—ON DANGEROUS STRUCTURES.

	£	s.	d.
On each dangerous structure—			
Where there are not more than four adjoining or nearly contiguous structures in the same ownership—			
1. For making a survey of the structure reported as dangerous and certifying opinion thereon—			
If the structure do not exceed four squares in area and two storeys in height	0	7	6
If exceeding four squares	0	10	0
For every additional storey above two	0	2	6
2. For each inspection of the structure and report as to completion or progress of the works	0	5	0
3. For inspecting the structure before the hearing of the summons and attending the court to give evidence—			
If one structure only	0	10	0
If more than one structure (for each structure)	0	5	0
4. For inspecting the structure before the hearing of the summons against the occupier (the owner having failed to comply) and attending the court to give evidence—			
If one structure only	0	10	0
If more than one structure (for each structure)	0	5	0
5. For every adjournment of the summons	0	5	0
6. For superintending the erection of shoring (including needling when requisite) and hoarding whether done by the council or not and for certifying the account for the same when done by the council	0	10	0
7. For shoring without hoarding or hoarding without shoring and certifying the account	0	7	6
8. For supervision including the report of the officer in cases where it is necessary for the council to execute works to ensure the safety of the public under an order made by a court	0	5	0
Where there are more than four adjoining or nearly contiguous structures in the same ownership—			
For Nos. 2 3 and 4 in the above table	0	4	0
For No. 5	0	2	6
And for No. 8	0	4	0

PART III.—FEES PAYABLE FOR SPECIAL SERVICES.

The fees payable by a builder to the district surveyor for special services shall be the following :—

	£	s.	d.
For superintending the construction of floors and partition walls to stables under section 70 of this Act per building	0	5	0
For superintending the construction of overhanging oriel windows per building	0	5	0
For superintending the fixing of any oven copper steam boiler or stove to be used for trade purposes and not heated by gas	0	10	0
For superintending the fixing of pipes for conveying heated air or hot water or steam at high pressure (for each floor of a building on which pipes are fixed)	0	10	0
For services relating to the erection of buildings on low lying lands per building	0	5	0

PART IV.—FEES PAYABLE TO COUNCIL.

ON DANGEROUS STRUCTURES.

For general services—	£	s.	d.
1. For preparation of notices forms for same and postage	0	3	6
2. For service of notices (clerk's time)	0	2	6

	£	s.	d.
3. For travelling per mile (one way)	0	0	3
4. For obtaining summonses and orders (clerk's time)	0	2	6
5. For cost of each summons or order	0	3	0
Where there are two or more adjoining or nearly contiguous structures in the same ownership—			
For Nos. 2 and 4 (above) each	0	2	0

The fees payable upon ten structures shall be the maximum fees.

On Dilapidated and Neglected Buildings or Structures.

	£	s.	d.
1. For each inspection of the building or structure and report	0	5	0
2. For obtaining summons and order (clerk's time)	0	2	6
3. For cost of each summons or order	0	2	0
4. For attendance at a court to give evidence	0	5	0
5. For every adjournment	0	2	6
6. For supervision of works including report of officer in cases where the magistrate's order is executed by the council	0	5	0
7. For travelling, per mile (one way)	0	0	3
8. The cost of procuring local evidence to satisfy the magistrate that the condition of the structure is prejudicial to the property or to the inhabitants of the neighbourhood is to be considered separately in each case.			
Where there are two or more adjoining or nearly contiguous structures in the same ownership—			
For Nos. 1 4 or 6 (above) each	0	3	0
For Nos. 2 or 5 (above) each	0	2	0

The fees payable upon ten structures shall be the maximum fees.

For travelling per mile (one way)	0	0	3

Regulations.

1. The fees specified in this schedule in respect of works to a party-wall comprise the fees payable in respect of both sides of the wall.

2. No fee shall be charged in respect of the fixing of a chimney pot.

3. No fee shall be charged in respect of the repairing of a chimney top unless the top has been pulled down to a greater extent than twelve inches.

4. No fee shall be charged in respect of the repairing of a parapet unless the parapet shall have been pulled down to a greater extent than twelve inches.

5. In calculating the area of every new building for the purposes of this schedule the area of all outbuildings not exceeding thirty feet in area whether attached or not shall be included provided such outbuildings be erected at the same time as the main building.

The Fourth Schedule.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
7 & 8 Vict. c. 84 ..	The Metropolitan Building Act 1844.	So much as is unrepealed.
18 & 19 Vict. c. 120 ..	The Metropolis Management Act 1855.	Section one hundred and forty-two and in section two hundred and two the words "the plans level "width surface inclination and" and the words "and the plans "and level of sites for building."

57 & 58 Vict. ch. ccxiii.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
18 & 19 Vict. c. 122 . .	The Metropolitan Building Act 1855.	The whole Act.
23 & 24 Vict. c. 52 . .	The Metropolitan Building Act (Amendment) 1860.	The whole Act.
24 & 25 Vict. c. 87 . .	The Metropolitan Building Amendment Act 1861.	The whole Act.
25 & 26 Vict. c. 102 . .	The Metropolis Management Amendment Act 1862.	Sections seventy-four seventy-five seventy-six eighty-five eighty-seven ninety-eight and ninety-nine.
32 & 33 Vict. c. 82 . .	The Metropolitan Building Act 1869.	The whole Act.
34 & 35 Vict. c. 39 . .	The Metropolitan Building Act 1871.	The whole Act.
41 & 42 Vict. c. 32 . .	The Metropolis Management and Building Acts (Amendment) Act 1878.	Sections four six seven eight nine ten fourteen fifteen sixteen seventeen eighteen nineteen twenty twenty-one from "and "the district surveyor" to "such "house building erection or "work" and the words "or "surveyor" section twenty-two so far as it relates to any notice or order served or made under any provision repealed by this Act section twenty-three from "and every penalty imposed by "part ii." to "Acts amending "the same" section twenty-five in section twenty-six the words "or in any byelaw of the board "thereunder" and in section twenty-seven the words "or in "any byelaw thereunder made."
45 & 46 Vict. c. 14 . .	The Metropolis Management and Building Acts (Amendment) Act 1882.	The whole Act.
53 & 54 Vict. c. ccxliii.	The London Council (General Powers) Act 1890.	Sections twenty-seven to thirty-one and sections thirty-three to thirty-seven.
54 & 55 Vict. c. lxxviii.	The London Sky Signs Act 1891.	The whole Act.
56 & 57 Vict. c. ccxxi.	The London County Council (General Powers) Act 1893.	Sections five to nine and section seventeen.

METROPOLITAN PAVING ACT, 1817,

Commonly called

MICHAEL ANGELO TAYLOR'S ACT (*a*).

57 Geo. 3, ch. xxix. An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein. [16th June, **1817**

[*Preamble.*]

Act to extend to all streets within the Metropolis and the bills of mortality, and Pancras and Marylebone.

1. This Act and the provisions herein contained shall extend to all streets and public places which are now paved or which may be hereafter paved, within the cities of London and Westminster and borough of Southwark, and any other parts of the Metropolis which are included within the weekly bills of mortality, and to all streets and public places which are now paved, or which may be hereafter paved, within the parishes of Saint Pancras and Saint Marylebone in the said county of Middlesex, except only any parts thereof which may be hereinafter particularly excepted (*b*).

2. [*Surveyors of pavements to be appointed. Superseded by the Metrop. Man. Act, 1855, ante.*]

3. [*Persons incapacitated from being surveyors.*]

4. [*Successors to surveyors to be appointed within one month after any vacancy.*]

5. [*Boards inscribed with the names and residence of surveyors, to be placed in conspicuous parts of every district.*]

Certain housekeepers in any part of the metropolis may give notice to surveyors of any dangerous or very defective pavement, and shall require the reparation thereof.

6. In case any person being the occupier of an inhabited dwelling-house, situate in any parish or place also within the jurisdiction of this Act, and rated to the relief of the poor of such parish or place wherein such dwelling-house shall be situate, at the sum of fifty pounds at the least, for and in respect of such dwelling-house, or in case any two persons being the occupiers of two several inhabited dwelling-houses situate in any parish or place, parishes or places also within the jurisdiction of this Act, and each of whom shall be rated to the relief of the poor of such parish or place, parishes or places, wherein such dwelling-houses shall be respectively situate, at the sum of twenty-five pounds at the least, for and in respect of their said respective dwelling-houses, shall think that the pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or any part of such pavement, is in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then and in every such case it shall and may be lawful to and for such one person alone, or for such two persons jointly, to prepare a notice, signed with his or their respective hand or hands, setting forth the number of his or their respective dwelling-house or dwelling-houses, and the street or public place, or streets or public places, wherein such dwelling-house or dwelling houses is or are situate, and describing the part of the pavements of any street or public place which he or they consider to be then dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and also requiring the reparation thereof, and to address such notice to any person being a surveyor for the time being of the pavements of and within the parochial or other district wherein the part of any street or public place shall be situate, the pavement whereof shall then be dangerous to passengers, or so very defective as aforesaid, and to give such notice to any such surveyor, or to leave the same for him at the dwelling-house or office within such parochial or other district, inscribed on the boards to be from time to time set up by the commissioners or trustees or other persons having the control of the pavements of and within such parochial or other district, pursuant to the directions of this Act.

(*a*) **Title.** This Act is also known as the General Paving (Metropolis) Act, 1817.

(*b*) **Extent of Act.** The powers of improving and regulating streets and for the suppression of nuisances, contained in this Act, so far as they were in force and not inconsistent with the provisions of the Metrop. Man. Acts, were extended by the Metrop. Man. Amend. Act, 1862, sec. 73, *ante*, p. 255, to apply to the whole of the Metropolis, including any unpaved streets, notwithstanding any exceptions in this Act contained. The Act was held not to apply to a private place such as Ely Place. *Paul* v. *James*, 1 Gale & Dav. 316.

57 Geo. 3, ch. xxix.

Surveyors or commissioners shall cause such dangerous or defective pavement to be repaired.

7. Every person from time to time hereafter being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, to whom shall be given or for whom shall be left a notice, signed and prepared as before directed, of the dangerous or very defective state as aforesaid of any part of the pavement of any street or public place in the parochial or other district in and for which he shall then be a surveyor of pavements, shall forthwith inspect the part of the pavement described in such notice given to or left for him; and if the same or any part thereof shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and if the cost and charges of and about the repairing of such dangerous or very defective pavement will not exceed the sum of two pounds, he shall cause such pavement to be effectually repaired within three days after the day whereon such notice shall have been given to or left for him as aforesaid; and if the costs and charges of and about the repairing of such pavement will exceed the sum of two pounds, but will not exceed the sum of ten pounds, then he shall cause such dangerous or very defective pavement to be effectually repaired within seven days after the day whereon such notice shall have been given to or left for him as aforesaid; and in either of such cases, such surveyor may and shall cause such pavements to be so effectually repaired by and of his own authority, and without any order or direction from the commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein he shall be appointed to act; and the costs and charges of such effectual reparation shall be paid by such commissioners or trustees or other persons having the control of the pavements of the parochial or other district wherein such dangerous or very defective pavement may be situate; but if it shall appear to the said surveyor, upon the inspection of the pavements described in any notice to be given to or left for him as aforesaid, that the same is really in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, and that the costs and charges of and about the effectual reparation of such part of the said pavements as may then be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, will exceed the sum of ten pounds, then and in every such case the said surveyor shall deliver a copy of the notice given to or left for him as aforesaid, to the clerk or clerks or other proper officer of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, within three days after such notice shall have been given to or left for him as aforesaid, and shall in writing require such clerk or clerks, or other proper officer, duly to summon a general meeting of the commissioners or trustees or other persons having the control of the pavements of such parochial or other district, according to the usual custom of such clerk or clerks or other proper officer, or to the directions of the local Act or Acts of Parliament under or by virtue whereof such commissioners or trustees, or other persons having the control of the pavements of and in such parochial or other district, shall be appointed; and that such clerk or clerks, or other proper officer, within two days after he shall receive notice and requisition from the said surveyor, shall summon or cause to be summoned a general meeting of the said commissioners or trustees, or other persons having the control of the pavements of and in such parochial or other district, to be held within four days then next, for the purpose of considering the notice given to or left for the surveyor appointed by them as aforesaid; and that the said commissioners or trustees, or other persons having the control of the pavements of such parochial or other district, or a sufficient number of them for the transaction of business, according to the provisions of the local Act or Acts of Parliament under or by virtue of which they are or shall be appointed, shall assemble at their usual place of meeting pursuant to such summons, and shall then and there consider such notice so given to or left for the said surveyor of the pavements of such parochial or other district; and if such part of the pavement described in such notice, or any part thereof, shall really be in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, then such commissioners or trustees or other persons shall then and there direct the effectual reparation of such part of the pavements mentioned in the said notice as may be dangerous to passengers, or so very defective as aforesaid, and shall cause the same and every part thereof to be so effectually repaired at their costs and charges, within twenty-eight days then next, if the charges of and about so effectually repairing the same will not in their judgment exceed the

sum of fifty pounds, and within six weeks then next if the charges of and about so effectually repairing the same will in their judgment exceed the said sum of fifty pounds. 57 Geo. 3, ch. xxix.

Justices on neglect may summon surveyors, and order the repair.

8. If at any time or times hereafter the pavement of any street or public place within the jurisdiction of this Act, being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, whereof a notice, prepared and signed as hereinbefore is directed, shall have been given to or left for any person being a surveyor of the pavements of the parochial or other district wherein the pavement so dangerous to passengers, or so very defective as aforesaid, may be situate, shall not be sufficiently repaired within the times hereinbefore appointed for the reparation thereof, (that is to say) within three days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of two pounds, and within seven days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of ten pounds, and within twenty-eight days from the day whereon the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would not exceed the sum of fifty pounds, and within six weeks next after the said notice shall have been given or left as aforesaid, if the costs and charges of and about such repair would exceed the sum of fifty pounds, then it shall and may be lawful to and for the person or persons by whom any notice signed as hereinbefore is directed shall have been given or left as aforesaid, to apply and complain to any two justices of the peace acting for the city, borough, or county wherein the pavement of the street or public place described in the notice so given or left as aforesaid shall be situate, and that upon proof upon oath, by one or more credible witness or witnesses, that a notice, prepared and signed as hereinbefore is directed, had been given to or left for a person appointed and notified to be a surveyor of the pavements of such parochial or other district wherein the pavement described in such notice may be situate, and according to the directions of this Act, and that the part of the pavements in any street or public place described in such notice, and being in a state dangerous to passengers, or so very defective as to occasion serious inconvenience to passengers and carriages, had not been sufficiently repaired within the time hereinbefore limited by this Act, according to the costs and charges which must be incurred in and about such reparation; then such justices of the peace, by a summons under their hands, shall require the said person, being appointed and notified to be a surveyor of the pavements for the parochial or other district wherein the pavement of any street or public place dangerous to passengers, or so very defective as aforesaid, shall be situate, to or for whom the said notice, prepared and signed as aforesaid, shall have been given or left, according to the directions of this Act, to appear before them the said justices, at a place and time to be mentioned in such summons (and the time being twenty-four hours at the least after the said summons shall have been given to the said surveyor, or shall have been left for him at his dwelling-house or office within the parochial or other district whereof he shall be appointed to survey, inscribed on the boards hereinbefore directed to be set up in every parochial and other district within the jurisdiction of this Act), and then and there to show cause why the pavement described in the said notice hath not been sufficiently repaired according to such notice within the times hereinbefore by this Act limited, according to the expense which must be incurred in and about such repair; and that if the said surveyor, or some person authorised by him, shall not attend before the said justices at the time and place mentioned in such summons, or if he or such other person authorised by him shall then and there attend, and shall not show to them the said justices a sufficient cause or sufficient causes why the said pavement described in the said notice given to or left for the said surveyor as hereinbefore is directed, and every part thereof, have not been sufficiently repaired according to such notice, then and upon proof upon oath by two or more credible witnesses that the pavement described in the said notice is then dangerous to passengers, or so very defective as aforesaid, and that the same is situate within the parochial or other district for which the said surveyor shall have been appointed and notified as appointed to act, it shall and may be lawful to and for the said justices, by order under their hands and seals, to order and direct that the said surveyor shall pay to the person or persons by whom the said notice shall have been

57 Geo. 3, ch. xxix.

signed as aforesaid, such sum of money as he or they shall have legally expended for the costs and charges of such summons and order, and which said sum of money so by the said justices ordered to be paid by the said surveyor shall and may be recovered in the same manner in which any other forfeitures and penalties are hereinafter directed to be recovered by virtue of this Act; and the said justices shall also then and there, by an order under their hands and seals, order the said surveyor to sufficiently repair or cause to be repaired all the pavements described in the said notice being in a state dangerous to passengers, or so very defective as aforesaid, and being in the parochial or other district wherein he the said surveyor shall have been appointed to act as surveyor of the pavement, within three days then next if the costs and charges of and about such repair will not exceed the sum of two pounds, and within seven days then next if the costs and charges of and about the said repair will not exceed the sum of ten pounds, and within twenty-eight days then next if the costs and charges of and about such repair will exceed the sum of ten pounds but will not exceed the sum of fifty pounds, and within six weeks then next if the costs and charges of and about such repair will exceed the sum of fifty pounds; and the said order of the said justices of the peace, within twenty-four hours after the same shall be made, shall be given to the said surveyor, or left for him at his dwelling-house or office within the parish or other district the pavement whereof he shall be appointed to survey, inscribed on the said boards hereinbefore directed to be set up, and shall be obeyed and performed by him; and he the said surveyor shall sufficiently repair the said pavements, or cause the same to be sufficiently repaired, within the time to be directed by the said order, at the costs and charges of the commissioners or trustees or other persons having the control of the pavements of that parochial or other district wherein the pavements shall be situate which by such order shall be so ordered to be repaired; but if the said surveyor, or any person authorised by him, shall attend before the said justices at the time and place mentioned in such summons, and shall show to the said justices that such notice was not prepared and signed and given or left according to the directions of this Act, or that the pavement described in such notice was not in a state dangerous to passengers, or was not in a state so very defective as to occasion serious inconvenience to passengers and carriages, either at the time of the delivery of such notice, or at the time of the application of the person or persons signing such notice to such justices, or shall then and there show to such justices such other cause or causes as they shall deem sufficient why the said pavements have not been repaired according to such notice, then and in any or either of the said cases the said justices shall dismiss the said complaint of the person or persons by whom the said notice shall have been signed as aforesaid, and by an order under their hands and seals shall declare that such person or persons having signed the said notice, and having made the application and complaint to them the said justices, hath or have forfeited the sum of forty shillings, and shall direct the same sum of forty shillings to be paid by him or them to the said surveyor or other person authorised by him, then attending before the said justices, for his own use and benefit; and such sum of forty shillings so forfeited shall be recovered in the manner in which other forefeitures and penalties are hereinafter directed to be recovered by virtue of this Act: provided always, and be it hereby also enacted, that if it shall appear to the said justices of the peace that the costs and charges of and about the repair of any pavement so by them ordered to be repaired as aforesaid will exceed the sum of fifty pounds, or that such reparation cannot be probably completed within six weeks then next, then and in such case, or under any other special circumstances, it shall and may be lawful to and for the said justices to extend any of the times for completing the repair of any such pavement to some other time beyond the period of six weeks, or beyond the other periods mentioned by this Act, at their discretion, and so that such repair be completed with all the expedition which the extent of such repair and such special circumstances in the judgment of the said justices of the peace, will permit.

Surveyors neglecting to attend on justices, or disobeying their orders

9. If any person from time to time hereafter, being the surveyor of the pavements of any parochial or other district within the jurisdiction of this Act, and being summoned by any two justices of the peace as hereinbefore is directed, shall refuse or neglect, either personally or by some person authorised by him to attend before such justices at the time and place to be mentioned in such summons, or shall refuse or neglect to perform and obey any order which may

be legally made by such two justices of the peace, under their hands and seals, as hereinbefore is directed, and which shall direct, according to the provisions of this Act, the reparation of any pavements dangerous to any passengers, or so very defective as to occasion serious inconvenience to passengers and carriages in any streets or public places within the parochial or other district for which he shall be appointed to act as a surveyor of the pavements, and to perform and obey the same within the time specified therein (he having notice thereof as hereinbefore is directed, and not being prevented from the observance and performance of such order by frost or other unavoidable circumstances, or by the neglect or proceedings of any water or gas company, or commissioners of sewers), then and in such case the said person being the surveyor as aforesaid shall forfeit and pay for such refusal or neglect any sum not exceeding ten pounds for the first offence, and a sum not exceeding twenty pounds for the second offence, and a sum not exceeding thirty pounds for every third offence, to be recovered in such manner as other penalties or forfeitures are by this Act hereinafter directed to be recovered, and to be paid, when recovered, to the churchwardens or overseers of the poor of the parish or district wherein any such dangerous or defective pavement shall be situate, and to be by them applied to and for the use of the poor of such parish or district, and in aid of the rates for the relief of the poor of such parish or district, and to no other person or persons and for no other use or purpose whatsoever; and such person who shall be guilty of such third offence shall thereafter become disqualified from acting in the said office of a surveyor of the pavements in the same or in any other parochial or other district within the jurisdiction of this Act, and from being re-appointed or appointed thereto, and from acting therein, either gratuitously or otherwise, or under any pretence whatsoever, unless he shall so act under the direction and by the command of the commissioners, trustees, or other persons by whom he shall have been appointed: provided always, that all costs, charges, and expenses which such person, being the surveyor of the pavements of any parochial or other district, shall incur or expend in and about the observance and performance of any such order made by the said two justices of the peace as aforesaid for the reparation of the pavements in such parochial or other district, being dangerous to passengers or very defective as aforesaid, as hereinbefore is directed, or which he shall incur or be put unto in consequence of his refusal or neglect to perform and obey any such order by the directions in writing of the commissioners or trustees or other persons having the control of the pavements of the parochial or other district for which he may be appointed to act, shall be forthwith paid or reimbursed to him by such commissioners or trustees or other persons, out of the moneys which they shall then possess, or shall first thereafter receive, by virtue or on account of any rates or assessments theretofore or thereafter made, for and towards the expenses of the paving or reparation of the pavement of such parochial or other district, or otherwise, by virtue of any local Act or Acts of Parliament, or by virtue of this Act.

57 Geo. 3, ch. xxix.

shall be fined; and shall be disqualified on a third offence.

10. [*Notice of the appointment of surveyor to be given to water and gas companies and commissioners of sewers within seven days.*]

11. [*Previous notice to be given by companies and commissioners of sewers to surveyors before they break up any pavement except for repairs. See now the Metrop. Man. Act*, 1855, *sec.* 109, *ante.*]

12. [*New mains of water pipes, &c., to be made of iron, and not laid down during the months of December, January, or February. See now the Metrop. Man. Act*, 1855, *sec.* 109, *ante.*]

13. It shall and may be lawful to and for any person appointed to act as a surveyor of the pavements in any parochial or other district within the jurisdiction of this Act, and to and for any other person or persons appointed by the commissioners or trustees, or other persons having the control of the pavements of any such parochial or other district, when he shall be directed so to do by the commissioners or trustees or other persons by whom he or they shall be appointed to act, from time to time and at any times between the hours of ten of the clock in the forenoon and of four of the clock in the afternoon of any day not being a Sunday or holiday appointed by law, at the office or counting-house of any water or gas light company, any of whose pipes for the conveyance of water or of inflammable air or gas shall then be laid beneath the surface of any of the streets or public places within each of such parochial or other districts, the pavements

Plans of pipes and sewers may be examined by surveyors of pavement.

57 Geo. 3, ch. xxix.

whereof shall be under the control of such several commissioners or trustees, or other persons, or for which any such surveyor shall be appointed to act, and at the office of any commissioners of sewers then having jurisdiction over the common and public drains and sewers within every such parochial or other district, to examine and inspect any and every map or plan, or draft or survey, or delineation or description of all and every the main of pipes and pipes belonging to any of such water or gas light companies, then possessed by them, or being in their custody or power, and any and every map or plan, or draft or survey, delineation or description, of the common and public drains or sewers being within such parochial or other district, and under the jurisdiction of such commissioners of sewers, then possessed by them, or being in their custody or power, he such surveyor for the time being, or such other person or persons appointed by the said commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, having given to a clerk or secretary of any such company or commissioners of sewers, or having left at the office or counting-house of such company or commissioners of sewers, two days previous notice in writing of his or their intention to attend at the office or counting-house of such companies or commissioners of sewers, for the purpose aforesaid; and that the secretary or clerk, or some other officer of such company or commissioners of sewers, shall then and there produce and show, or cause to be produced and shown, unto such surveyor or other person or persons, all and every the maps, plans, drafts, surveys, delineations, and descriptions aforesaid, in the custody or power of the said company or commissioners of sewers, and shall permit him or them then and there to take extracts therefrom, or copies thereof, or of and from any of them, or any part of any of them so far as may relate to the mains of pipes or pipes, and to the public or common sewers or drains which shall be laid or be beneath the surface of the streets or public places within the parochial or other district for which such surveyor of pavements, or other person or persons appointed by any such commissioners or trustees, or other persons having the control of pavements, shall be deputed or directed to act.

Officers of companies, &c., to notify their names and places of abode to surveyors of pavements.

14. All and every the secretaries or clerks, surveyors or inspectors, and the several and respective turncocks employed or appointed, or hereafter being employed or appointed by all and every the water and gas light companies, any of whose pipes shall be laid beneath the surface of any street or public place in any parochial or other district within the jurisdiction of this Act, and also all and every the clerk and clerks, secretary and secretaries appointed or being hereafter appointed by any commissioners of sewers whose jurisdiction shall extend over the common or public drains or sewers within every such parochial or other district, within forty days next after the passing of this Act, or within the space of five days next he or they shall be hereafter severally appointed to such several offices, situations, or employments, shall give notice in writing to each and every of the clerk or clerks to the commissioners or trustees, or other persons having the control of the pavements, or to the surveyor and surveyors of the pavements of each parochial or other district, beneath the surface of the streets or public places wherein the mains or pipes of such company, or any of them, shall be laid, or there shall be any common or public drains or sewers within the jurisdiction of such commissioners of sewers, of his, their, and every of their christian and surnames and place or places of abode, and of the company or commissioners of sewers, by whom he or they is or are, or hath or have been so appointed or employed, and also of the place which is appointed as the office or counting-house of the said company or commissioners of sewers; and that in case any such person or persons shall neglect to give such notice within the respective times aforesaid, every such person or persons so offending in either of the said cases shall forfeit and pay the sum of ten pounds, to be recovered in the same manner in which other penalties and forfeitures are hereafter directed to be recovered by virtue of this Act.

Surveyor may require repair of pipes and drains when defective.

Notice to be given to repair them.

15. When and so often as it shall appear to any person appointed to act as a surveyor of pavements in any parochial or other district within the jurisdiction of this Act, that any pipe or pipes, stopcock, plug, or other thing belonging to any water or gas light company, or that any public sewer beneath the surface of the pavement of any street or public place within such parochial or other district, be broken or damaged, it shall be lawful for such surveyor, and he is hereby required to give immediate notice, signed by himself, to the company or commissioners of sewers to whom it may appear to him that such pipe or stopcock,

plug, or other thing, or sewer, doth or may belong, by either giving such notice to a clerk or secretary, or to a turncock of such company, or to a clerk or secretary of such commissioners of sewers, or to some or one of them, or by leaving the same at the place or places of abode of some or one of them, or at the office or counting-house of such company or commissioners of sewers, and shall require that such pipe, stopcock, plug, or other thing, or sewer, be examined, and, if needful, that such pipe, stopcock, plug, or other thing be repaired, altered, amended, or renewed, and such sewer be repaired by such company, or commissioners of sewers; and that within forty-eight hours after such notice shall be so given or left as aforesaid, the said company or commissioners of sewers, to or for whom, or to or for whose officer or servant such notice shall have been given or left as aforesaid, shall cause to be taken up the pavement of the street or public place beneath which the pipe, stopcock, plug, or other defective thing, or sewer, shall be, and shall cause the ground to be opened, and shall also cause the said pipe, stopcock, plug, or other thing to be substantially repaired, altered, amended, or renewed, or the said sewer to be examined, and, if necessary, to be substantially repaired, and the ground properly filled in with hard rubbish or other good materials, and rammed down, within forty-eight hours next after such notice shall be given or left as aforesaid, or with all convenient expedition, in the judgment of the commissioners, trustees, or other persons having the control of the pavements in the parochial or other district wherein such pavement, street, or public place shall be situate, and to their satisfaction, or the satisfaction of any three or more of them; and also within twelve hours after such pipe, stopcock, plug, or other thing shall be so substantially repaired, altered, amended, or renewed, or such sewer shall be so substantially repaired, and the ground above the same shall be so filled in and rammed down, the said company or commissioners of sewers shall cause notice thereof, signed by the clerk or secretary to such company or commissioners of sewers, to be given to the said surveyor of pavements, or to the pavior or paviors or other persons then employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavements within such parochial or other district, as the said commissioners or trustees or other persons for the time being may from time to time direct, that such examination, and, if necessary, such reparation, alteration, amendment, or renewal, hath been made pursuant to such notice of the surveyor of pavements, and that the ground hath been refilled and rammed down, that the pavement in such street or public place may be forthwith relaid in the manner directed by this Act; and in case the water or gas company, or commissioners of sewers, to or for whom such notice of the surveyor of pavements shall have been given or left as aforesaid, and to whom such pipe, stopcock, plug, or other thing, or sewer, referred to in such notice shall belong, shall neglect to cause the same to be repaired, altered or amended, or renewed, as the case may be, and the ground to be filled in and rammed down to the satisfaction of the said commissioners, trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them, within the time hereinbefore limited and appointed for those purposes, or shall neglect to give or cause to be given notice thereof as aforesaid to the said surveyor of the pavements, or to the pavior or paviors, or other persons employed or appointed by the commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, to pave and repair the pavement within such parochial or other district; then the said company or commissioners of sewers shall for the first neglect and offence forfeit and pay the sum of five pounds, and for the second neglect and offence shall forfeit and shall pay the sum of eight pounds, and for the third and every subsequent neglect and offence shall forfeit and shall pay the sum of ten pounds, to be recovered in the same manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act.

Penalty on company to whom the pipes belong for not repairing them, and giving notice thereof to the pavior;

16. Provided always, that in case it shall happen and it shall be discovered, after any pavement in any street or public place shall have been taken up, and the ground shall have been opened, that any pipe, stopcock, plug, or other thing, beneath the surface of the pavement of any street or public place, which shall have appeared to any surveyor of pavements to require to be repaired, altered, amended, or renewed, shall not belong to the water or gas company to or for whom such notice for the reparation, alteration, amendment, or renewal thereof as aforesaid shall have been given or left as is hereinbefore directed by the said

and if such request should not be made to the proper parties, subsequent information shall be given to them.

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surveyor, but to some other water or gas company, or to some other persons, then such company to or for whom the said notice of the said surveyor of pavements shall have been given or left, within twenty-four hours after the notice from the said surveyor of pavements shall have been given or left as aforesaid, shall cause a notice signed by the secretary or clerk, to be given in the same manner hereinbefore directed as to the service of the original notice to the company or other persons to whom the pipe, stopcock, plug, or other thing shall appear to belong, which did appear to the said surveyor of pavements to require reparation, alteration, amendment, or renewal, and shall thereby require them to obey and perform and comply with the said original notice from the said surveyor of pavements, instead of the company to whom such original notice had been given; and that such company or other persons to whom such pipe, stopcock, plug, or other thing, shall belong, shall reimburse and pay on demand to the first-mentioned company to or for whom the original notice may have been given or left, the reasonable costs and charges which they shall have incurred in and about taking up the pavements and opening the ground, and shall obey, execute, and perform the said original notice of the said surveyor, and the directions of this Act relating thereto, in such and the same manner, and within such and the same time, in all respects, as if the said original notice from the said surveyor had been given to them; and they shall be liable to and shall incur the same penalties and forfeitures on neglect so to do, as they ought to have done, or would have been liable to, and would have incurred, if the said original notice had been given to them in manner before directed; and that the company by whom the pavements shall be first taken up and the ground shall be opened, who shall neglect to give the notices hereby required to the company to whom the pipe, stopcock, plug, or other thing, which shall appear to the surveyor of the pavements to require reparation, alteration, amendment or renewal, shall appear to belong, in manner hereinbefore directed, shall for the first neglect and offence forfeit and pay the sum of five pounds, and for the second neglect and offence shall forfeit and shall pay the sum of eight pounds, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of ten pounds, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Repairs and works by companies, &c., to be executed with all convenient expedition.

17. Whenever after the passing of this Act any water or gas light company, or commissioners of sewers, pursuant to the provisions hereinbefore contained, shall take up or cause to be taken up any pavement of any street or public place in any parochial or other district within the jurisdiction of this Act, or shall place in any street or public place, any pipes, or other materials and things, for the purpose of executing any works beneath the surface of any street or public place, or otherwise, all and every such works shall be executed and completed within such reasonable time as the commissioners or trustees, or any other persons having the control of the pavements of the streets and public places in such parochial or other district, or any three or more of them, shall from time to time and at any time direct and appoint; and also, that all such pipes or other materials and things shall be and remain on the surface of any such street or public place, and of any streets and public places in any parochial or other district, for no longer period than shall be unavoidably necessary in the judgment of the said commissioners or trustees, or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and also that the same pipes or other materials and things shall be from time to time and at all times removed and taken away off and from the surface of any and every street or public place by the water or gas light company, or commissioners of sewers, or by the officers or servants of the company, or commissioners of sewers, by whom or by whose order, or by whose officers or servants, or for whose offices or works, all or any such pipes or other materials or things shall have been brought to and placed on the surface of such streets or public places, or any of them, and at their costs and charges, within forty-eight hours after such company or commissioners of sewers shall have been required to remove and take away the same by the commissioners or trustees, or other persons having the control of the pavements in any such parochial or other district, or any three or more of them, by a notice signed by three or more of such commissioners or trustees or other persons, and given to such company or commissioners of sewers, or left for them at the dwelling-house or place of abode of any secretary or clerk or turncock employed by such company, or of a clerk or

secretary to such commissioners of sewers, or at the office or counting house of such company or commissioners of sewers; and that in case any company or commissioners of sewers shall at any time or times neglect to comply with any and every such notice, and to obey all and every the directions which the said commissioners or trustees or other persons having the control of the pavements in any parochial or other district, or any of them, are by this Act authorised and empowered to give, then and in every or any such case such company or commissioners of sewers shall for the first neglect and offence forfeit and shall pay the sum of five pounds, and for the second neglect and offence shall forfeit and shall pay the sum of eight pounds, and for the third and every subsequent neglect and offence shall forfeit and pay the sum of ten pounds, to be recovered in the same manner in which other penalties and forfeitures are directed to be recovered by virtue of this Act.

Rubbish and obstructions occasioned in streets by the repairs of pipes, &c., to be speedily removed.

18. All dirt, gravel, filth, rubbish, and other things, which at any time or times after the passing of this Act, shall be placed, collected, or occasioned by or by means of any water or gas light company, or commissioners of sewers, or of any repairs or others works executed and performed or intended to be executed and performed by their officers or servants, or by their orders or directions, or on their account, in any streets or public places in any parochial or other district within the jurisdiction of this Act, by the taking up of the pavement of such streets or public places, or any of them, or by opening the ground beneath the surface of such streets or public places, or by the execution of the works of any water or gas light company or otherwise, or which shall be in anywise consequent thereon or incidental thereto, in the judgment of the commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district, or any three or more of them, shall be from time to time and at all times collected and removed and carried away, by or at the costs and charges of such company or commissioners of sewers, with all practicable expedition, and to the satisfaction of such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three or more of them; and that such company or commissioners of sewers shall especially so do whenever they shall be required so to do by any notice from such commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or any three of them, or from any surveyor of the pavements appointed by them, signed by them or him, and given to such company or commissioners of sewers, or left for them at the dwelling-house or place of abode of any secretary or clerk or turncock employed by such company or commissioners of sewers, or at any office or counting house of such company, or of any clerk or secretary to any such commissioners of sewers; and that in case any such company or commissioners of sewers shall neglect to collect, carry away, and remove, or cause to be collected, carried away, and removed, from all and every such streets and public places, all such dirt, gravel, filth, rubbish, and other things whatsoever, within twenty-four hours after any such notice shall be from time to time given or left as aforesaid, to the satisfaction of such commissioners or trustees, or other persons by whom any such notice shall be signed, then the said company or commissioners of sewers shall for every such neglect and offence forfeit and shall pay the sum of five pounds, to be recovered and applied in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered and applied by virtue of this Act.

19. [*Bars, watchmen, and other securities are to be provided during repairs of pavements, to prevent accidents. See now the Metrop. Man. Act*, 1855, *secs.* 110 *and* 111, *ante.*]

Breaches in the pavement may be inclosed.

20. In case at any time or times hereafter any pavement in any streets or public places in any parochial or other district within the jurisdiction of this Act shall, by the breaking or falling-in or decay of any sewer or drain, cesspool or watercourse, or any pipe or pipes, stopcock, plug, or other thing, become broken or irregular so as to be dangerous or hazardous to passengers or carriages, it shall and may be lawful to and for any surveyor of the pavements for any such parochial or other district to cause and direct such part of the pavements of any streets or public places as he shall deem so dangerous or hazardous to be forthwith inclosed, in such manner, by such persons, and with such materials as he may direct, and as may be needful to prevent such danger and hazard to

57 Geo. 3, ch. xxix.

passengers or carriages; and that the costs and charges incurred thereabouts shall be ascertained and determined by him, and shall be paid and discharged by the commissioners of sewers, water or gas company, or other person or persons to whom the sewer or drain, cesspool or watercourse, pipe or pipes, stopcock, plug, or other thing so broken, fallen in, or decayed, and by the breach, falling-in, or decay whereof such breach or irregularity of the pavements as aforesaid may have been occasioned, and shall and may be certified to them or him, and be paid by them or him within the time, and shall and may be recovered from them or him in such and the same manner as is by this Act directed, limited, and authorised as to any moneys to become due from any persons whomsoever for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other person having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Stand cocks placed during frosts regulated.

21. No water company whose mains or pipes shall be laid beneath the surface of any street or public place in any parochial or other district within the jurisdiction of this Act, shall place or set up, or cause to be placed or set up, any stand cock or pump, or other instrument, machine, or thing, for the supply of water in times of frost or otherwise, in any public street or place within the jurisdiction of this Act, which shall be furnished with any other than a metal cock and spout, to be to the satisfaction of the surveyor of the pavements for such parochial or other district for the time being; and that any water company who shall set up or cause to be set up any other stand cock, pump, or other instrument, machine, or thing, furnished with any other than a metal cock and spout, in any street or public place, and which shall not be to the satisfaction of the surveyor of the pavements for such parochial or other district, shall forfeit and shall pay for every such offence the sum of twenty shillings, to be recovered in the same manner in which other penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

Works neglected by companies, &c., may be executed by surveyors of pavements.

22. In case any water or gas light company or commissioners of sewers, at any time or times after the passing of this Act, shall neglect to take up the pavement in any street or public place in any parochial or other district within the jurisdiction of this Act; or to open any ground beneath the surface of such street or public place; or substantially to repair, alter, amend, or renew any pipe, plug, stopcock, or other thing, or any public sewer, as the case may be; or to give the notices required by this Act to any other company, or to any paviors, surveyors of pavements, or other persons; or to remove or take away any pipes or other materials or things from any street or public place; or to collect and carry away or remove all dirt, gravel, filth, rubbish, and other things, from any street or public place; or to place and continue posts, rails, bars, or ropes, lanthorns and watchmen, in any street or public place; or to do and execute all and every such works and things, and all or any other works and things directed and required by this Act to be done and executed by any such company or commissioners of sewers, and pursuant to any notice given or left as herein directed by any commissioners or trustees, or other persons having the control of the pavements in the streets or public places within any parochial or other district within the jurisdiction of this Act, or by the surveyors of pavements, or other officers or persons appointed by them or otherwise, and to their respective satisfaction, and within the several times and periods specified and directed by this Act; then and in every or any of such cases, and at all times afterwards, it shall and may be lawful to and for any surveyor of the pavement of the parochial or other district wherein the street or public place shall be situate as to which any such neglect shall occur, and all and every such surveyors are hereby empowered and required, forthwith to cause all and every such several works, matters, and things which shall not be executed and performed by every such company or commissioners of sewers, or which shall not be well, substantially, and effectually executed and performed to his or their satisfaction, or to the satisfaction of the commissioners or trustees, or other persons by whom he or they shall be appointed, within the times and periods limited by this Act to be well and effectually performed to his or their satisfaction, or to the satisfaction of such commissioners or trustees, or other persons as aforesaid, as herein provided, at the costs and charges of such company or commissioners of sewers who shall have so neglected well, substantially, and effectually to perform and execute the same, and every of

them, and every part thereof; and that such costs and charges and every of them shall be reimbursed and paid by any and every such company or commissioners of sewers to such surveyor or surveyors of pavements, or to the person or persons employed by him or them to perform and execute any or every of such works, or to the commissioners or trustees, or other persons having the control of the pavements of the parochial or other district within which such works shall be performed and executed, or to their treasurer, or to such other person or persons as such commissioners or trustees or other persons shall from time to time appoint to receive the same; and that the amount of such costs and charges, and of the moneys so to be paid, being directed by the said commissioners or trustees or other persons, shall be ascertained and notified, and certified and recovered, (over and above all and every the penalties and forfeitures which may be incurred for any such neglect by virtue of this Act) in the same manner in which any costs and charges which may be incurred, and any moneys which may become due, for and about and in respect of the relaying or repairing of any pavements hereafter broken or taken up in any streets or public places by or by the direction or on account of any company, commissioners of sewers, or other persons, are to be ascertained and notified and certified, and may be recovered by virtue of this Act.

57 Geo. 3, ch. xxix.

23. [*Pavements taken up by companies, &c., to be relaid by commissioners of pavements. See now the Metrop. Man. Act*, 1855, *secs.* 110 *and* 114, *and the Metrop. Man. Amend. Act*, 1862, *sec.* 82, *ante.*]

24—30. [*Rating for purposes of Act. Superseded by the Metrop. Man. Act*, 1855, *sec.* 161, *ante.*]

Rates of premises let to ambassadors payable by landlords.

31. Every rate or assessment which at any time or times hereafter shall be made, laid or assessed by virtue of this Act or by virtue of any local Act or Acts of Parliament, for or towards the paving or repairing the pavements of the streets or public places in any parochial or other district within the jurisdiction of this Act, and either exclusively or jointly with or for any other object or purposes, for or in respect of any messuage or hereditament which any ambassador, envoy, resident agent, or other public minister of any foreign prince or State, or the servant of any such ambassador, envoy, resident agent, or other public minister (*c*), or any other person who may not be liable by law to pay such rate or assessment, now doth or hereafter shall inhabit, shall be paid by and recoverable from the landlord or owner of every such messuage or hereditament who shall be liable and compellable to the payment thereof; and the same shall be recovered from such landlord or owner in such and the same manner as the other rates or assessments made by virtue of this Act, or by virtue of any local Act or Acts of Parliament, for or towards the paving or repairing the pavements of the streets or public places in any parochial or other district within the jurisdiction of this Act, either exclusively or jointly with or for any other object or purposes, may be recovered from any other owner or occupier of any messuages or hereditaments, either by virtue of this Act or of any such local Act or Acts.

32. [*Empty houses how rateable. Superseded by the Metrop. Man. Act*, 1855, *sec.* 161, *ante.*]

33. [*Rates may be recovered for small houses let at small rents, or to weekly or monthly lodgers. Superseded by the Poor Rate Assessment and Collection Act*, 1869 (32 *&* 33 *Vict. c.* 41), *sec.* 3.]

34. [*Agreements between landlords and tenants not to be impeached.*]

35. [*Rates may be levied.*]

36. [*Constables to assist in such levy.*]

37—51. [*Recovery of rates. Superseded by the Metrop. Man. Act*, 1855, *sec.* 161, *ante.*]

(*c*) **Servant of ambassador, &c.** Under a similar provision of the St. Marylebone Local Act (35 Geo. 3. c. 73), it was held that a British subject accredited to Great Britain by a foreign power as a member of its embassy is, unless he has been received by the British Government upon the express condition that he shall be subject thereto, exempt from the local jurisdiction of his own country, and therefore his household furniture is privileged from seizure for non-payment of parochial rates. *Macartney* v. *Garbutt*, 24 Q. B. D. 368; 62 L. T. (N. S.) 656.

57 Geo. 3, ch. xxix.

52. [*Commissioners, &c., may pave streets within their districts, paving materials being vested in them. See now the Metrop. Man. Act*, 1855, *secs.* 90, 98, 105, *and* 106; *the Metrop. Man. Amend. Act*, 1862, *secs.* 77, 80 *and* 81, *and the Metrop. Man. Act*, 1862, *Amend. Act*, 1890, *ante.*]

53. [*Pavements not to be removed without permission. See now the Metrop. Man. Act*, 1855, *sec.* 109, *ante.*]

54. [*Commissioners may survey pavements, and order the reparation, and may pave any part within their districts. See now the Metrop. Man. Act*, 1855, *secs.* 90, 98—100, *and* 105 *and* 106, *ante.*]

55. [*Commissioners of sewers to make and repair grates. See now the Metrop. Man. Act*, 1855, *secs.* 69—72, *ante.*]

56. [*New sewers and grates may be also made and repaired. See now the Metrop. Man. Act*, 1855, *secs.* 69—72, *ante.*]

Private drains also to be cleansed.

57. Whenever from time to time or at any time hereafter it shall appear to the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, or to any two or more of them, or to their surveyor or surveyors for the time being, or any of them, that any private drain, sewer, . . . gutter, or watercourse, running beneath or above or communicating with any other drain or sewer beneath any of the pavements of any of the streets or public places in any such parochial or other district, doth require to be repaired, amended, altered, emptied, or cleansed, it shall and may be lawful to and for the said commissioners or trustees, or other persons having the control of such pavements as aforesaid, or any two or more of them, or their surveyor or surveyors as aforesaid for the time being, or any of them, to give or cause to be given a notice or notices under their hands, or under the hand or hands of such surveyor or surveyors of pavements for the time being, to or for the owner or owners or for the occupier or occupiers of all or any messuages, houses, lands, or other hereditaments, to whom such drain, sewer, . . . gutter, or watercourse shall belong, or by whom the same shall be used or enjoyed, or from whose messuages, houses, lands, or hereditaments any such drain, sewer, gutter, or watercourse shall proceed or flow, or wherewith the same or any such . . . shall communicate, well and sufficiently to repair, amend, alter, empty, or cleanse the same and every part thereof; and in case any such owner or owners, occupier or occupiers, within three days after any such notice shall be given or left as aforesaid, shall not well and effectually repair, amend, alter, empty, or cleanse any such drain or sewer and every part thereof, pursuant to such notice, and to the satisfaction of the said commissioners or trustees, or other persons as aforesaid, or of their surveyor or surveyors for the time being, then it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or for their surveyor or surveyors for the time being, to direct such drain, sewer, . . . gutter or watercourse to be repaired, amended, altered, emptied, or cleansed with such materials and in such manner as they or he may direct, and by such person or persons as they or he may from time to time appoint, and that the amount of the charges and the expenses incurred thereabouts, and also of taking up, relaying, or repairing any pavements in any streets or public places which may for those purposes or any of them be taken up, shall be ascertained and determined by such surveyor or surveyors of pavements as aforesaid, and shall be certified by him or them to such owner or owners, occupier or occupiers, and shall be paid by him or them within the same time, and may be recovered, with the same penalties in case of non-payment, in such and the same manner, and by such and the same proceedings as are by this Act authorised and directed for the ascertaining and determining, certifying and recovering any moneys to become due and to be recovered from any persons whomsoever, for the costs and charges of repairing or paving or repaving any pavements of any streets or public places by the commissioners or trustees or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act.

Posts may be erected for the

58. (*d*) The said commissioners or trustees, or other persons having the

(*d*) **Posts may be erected.** See also the Metrop. Man. Act, 1855, sec. 108, and note thereto, *ante*, p. 153. This section is not affected by sec. 199 of the London Building Act, 1894. See sec. 213 of that Act, *ante*.

57 Geo. 3, ch. xxix.

control of the pavements of the streets and public places in any parochial or other district within the jurisdiction of this Act, may cause posts of wood, stone, or iron to be set up near or adjoining the foot pavements in such part or parts of all or any of the streets or public places within their respective parochial or other districts as they shall judge necessary, and also shall and may set up posts and rails near or adjoining to any vacant ground, or other exposed or dangerous place, abutting upon or adjoining to any of the streets or public places in such parochial or other district, in case they shall think proper so to do, for preventing accidents or casualties; and if any person or persons shall wilfully or carelessly knock down, break, damage, or injure such posts or rails, or any of them, every person so offending shall for every such offence forfeit and pay any sum not being less than forty shillings nor exceeding ten pounds, and shall also make a full satisfaction (to be ascertained by the justice before whom such offender or offenders shall be convicted) to such commissioners, trustees, or other person or persons having the control of the pavements in the parochial or other district within which the offence shall be committed, for the damage so done, and that such penalty and satisfaction shall be recovered in the same manner in which penalties and forfeitures are hereinafter directed to be recovered by virtue of this Act.

preservation of the pavements and prevention of accidents.

59—61. [*Rep. by the Public Health (London) Act*, 1891, *sec.* 142, *ante.*]

62. [*Dirt not to be swept into any common sewer. See now the Metrop. Man. Act*, 1855, *sec.* 205, *ante.*]

63. [*Rep. by the Public Health (London) Act*, 1891, *sec.* 142, *ante.*]

Nuisances and annoyances from beating carpets, breaking horses, driving barrows and carriages on pavements.

64. (*e*) If any person or persons shall, in any street or public place in any parochial or other district within the jurisdiction of this Act, at any time or times hereafter, beat or dust any carpet or carpets; or shall drive any carriage or carriages, for the purpose of breaking, exercising, or trying horses; or shall ride any horse, mare, or gelding, for the purpose of exercising, airing, trying, showing, or exposing such horse, mare, or gelding for sale (otherwise than by passing through such streets or other public places); . . . or shall run, roll, drive, draw, or place, or cause, permit or suffer to be run, rolled, driven, drawn, or placed upon any of the said footway pavements of any street or public place in any parochial or other district within the jurisdiction of this Act, any waggon, cart, dray, sledge, or other carriage, or any wheel, wheelbarrow, handbarrow, or truck, or any hogshead, cask, or barrel; or shall wilfully ride, lead, or drive any horse, ass, mule, or other beast, upon any of the footway pavements aforesaid, then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate, and he is hereby required, upon complaint to him made upon oath or affirmation of one or more credible witness or witnesses, to issue a summons requiring such offender or offenders to appear before him, at such time and place as shall be in such summons specified; or it shall and may be lawful to and for any person or persons whomsoever, who shall see any such offence committed, if he or they shall think proper, to seize, and also for any other person or persons to assist in seizing such offender or offenders by the authority of this Act, and by such authority, and without any other authority or warrant whatsoever, to convey such offender or offenders before some justice of the peace for the city, borough, or county wherein any such parochial or other district may be situate; and upon the party or parties appearing in pursuance of such summons, or not appearing after having been so summoned, or being brought before such justice when so seized or otherwise, he the said justice shall proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence; and if the party or parties accused shall be convicted of any or either of the offences aforesaid, upon his or their own confession, or upon the oath or affirmation of one or more credible witness or witnesses as aforesaid, then and in every such case the person or persons so convicted shall forfeit and pay a sum not less than forty shillings nor exceeding five pounds for each and every offence; and that one moiety of every such penalty shall be paid to the informer

(*e*) **Sections 64 and 65.** Several of the offences in these sections are also offences under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 71). The words omitted from sec. 64 are repealed by the Public Health (London) Act, 1891. Sec. 142, *ante*.

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or informers, or to the person or persons who shall apprehend such offender or offenders; and the other moiety thereof shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offences shall have been committed.

Annoyances from stalls, baskets, and wares and other matters prohibited, and punishable on renewal after notice; and all such articles may be seized and sold.

65. (*f*) If any person or persons (*g*) at any time or times hereafter shall set or place, or cause or permit to be set or placed by any servant or person employed by him, her, or them, or otherwise, any stall board, chopping block, show board on hinges or otherwise, basket, ware, merchandise, casks, or goods of any kind whatsoever; or shall hoop, place, wash or cleanse, or caused to be hooped, washed, or cleansed, any pipe, barrel, cask, or vessel, in or upon or over any part of the carriage or foot ways in any streets or public places in any parochial or other districts within the jurisdiction of this Act; or shall set out, lay, or place or cause or procure, permit or suffer to be set out, laid or placed, any coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage upon any of the said carriageways (except such coaches, chariots, and chairs, as having been or shall be hereafter licensed by the commissioners for regulating and licensing hackney coaches, chariots, and chairs, and which stand for hire according to the statutes and byelaws made for those purposes), and also except for the necessary time of loading or unloading any cart, wain, waggon, dray, sledge, truck, or other carriage, or taking up or setting down any fare, or waiting for passengers when actually hired or harnessing or unharnessing the horses from any coach, cart, wain, waggon, dray, sledge, truck, or other carriage; or if any person or persons shall set or place, or caused to be set or placed, in or upon or over any of the said carriage or footways, any timber, stones, brick, lime, or other materials or things for building whatsoever (unless the same shall be enclosed as in and by any local Act or Acts of Parliament, or by this Act, or some of them, may be directed), or any other matters or things whatsoever; or shall hang out or expose, or cause or permit to be hung out or exposed, any meat or offal, or other matter or thing whatsoever, from any house or houses, or other buildings or premises belonging to or occupied by him, her, or them, over any part of either of such pavements, or over any area or areas of any houses or other buildings or premises; or shall place or put out, or cause or permit to be placed or put out, any garden or other pots (except the same shall be perfectly secured from falling to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in any such parochial or other district, or of their surveyor of the pavements for the time being), or any other matter or thing, from and on the outside of the front or any other part of any house or houses, or other buildings or premises, over or next unto any such street or public place (*h*), and shall not immediately remove all or any such matters or things, being thereunto required by any surveyor or surveyors of pavements, or by any other person or persons employed or appointed by the commissioners, trustees, or other persons having the control of the pavements in any parochial or other district, and whether the same shall have been so set or placed, exposed or put

(*f*) **Sections 64 and 65.** See note (*e*) on page 503.

(*g*) **Any person or persons.** When costermongers carry on their business in the usual way, and in conformity with the police regulations, they cannot be proceeded against under this section; but when costermongers disobey the police regulations, and also the direction of the vestry having jurisdiction over them, they can be proceeded against either under this section, or under the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), sec. 6. *Keep* v. *St. Mary's, Newington* (1894), 2 Q. B. 524; 63 L. J. Q. B. 369. See also *Summers* v. *Holborn Dist. Bd.* (1893), 1 Q. B. 612; 62 L. J. M. C. 81.

(*h*) **Over or next unto any street, &c.** These provisions are not impliedly repealed by sec. 119 of the Met. Man. Act, 1855, *ante*, p. 157, which contains further provisions as to projections. To constitute an offence under the present section, it is not necessary that there should be any danger to the highway; and it is sufficient if articles are hung out from a part of a house facing a highway, whether they hang over the highway or not. *Wyatt* v. *Gems* (1893), 2 Q. B. 225; 62 L. J. M. C. 158.

For rules regulating projections from buildings, see the London Building Act, 1894, sec. 73, *ante*, and for powers of the County Council to make byelaws for the regulation of lamp signs and other structures overhanging the public way, see sec. 164 (1) of the same Act.

out by himself, herself, or themselves personally, or by any of his, her, or their servants, or by any person or persons employed by him, her, or them, and shall not continue and keep the same so removed; or if any person or persons, having in pursuance of any such requisition or requisitions as aforesaid, removed or caused to be removed any such stall board, show board, chopping block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, carriage, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things, shall at any time thereafter again set, lay, or place, expose or put out, or cause, procure, permit or suffer to be again set, laid, or placed, exposed or put out, the same or any of them, or any other stall board, show board, chopping block, basket, wares, merchandise, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, timber, stones, bricks, lime, meat, offal, garden pots, or other matters or things whatsoever (save and except as aforesaid), in or upon or over any of the carriage or footways of or next unto any streets or public places within the same parochial or other district as aforesaid, then and in every such case it shall and may be lawful to and for any justice of the peace for the city, borough, or county wherein the said parochial or other district may be situate, and he is hereby required, upon complaint to him made by any one or more credible witness or witnesses upon oath, to issue a summons requiring the person or persons accused of such offence, or the owner or owners of the goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall be so set or placed, exposed or set out, or the master or masters of the person or persons by whose servants, or by the person or persons employed by whom, such offence shall have been committed, to appear before him, or before any other justice of the peace for the same city, borough, or county, as shall be then or there present, at such time or place as shall be in such summons specified, and then and there to proceed to examine upon oath or affirmation any witness or witnesses who shall appear or be produced to give evidence touching such offence; and if the person or persons so offending shall be convicted of any or either of the offences aforesaid, upon his, her, or their own confession, or upon the oath or affirmation of one or more credible witness or witnesses as aforesaid, he, she, or they who shall be so convicted, and the owner or owners of such goods, materials, meat, offal, garden pots, matters or things, or of the coaches, carts, waggons, drays, wheelbarrow, handbarrow, sledges, trucks, or other carriages which shall be so set or placed, exposed or set out as aforesaid, and the master or masters, employer or employers of the person or persons so offending, shall forfeit and pay for the first offence the sum of forty shillings, and for the second and every subsequent offence any sum not exceeding five pounds; and that such respective penalties shall be paid to the treasurer or treasurers of the commissioners, trustees, or other persons having the control of the pavements in the streets or public places in the parochial or other district wherein any such offence shall have been committed, or to such other person or persons as they shall direct and appoint; and also, that not only shall such penalties become payable and to be recovered, but that it shall and may be lawful to and for any person or persons appointed or to be appointed by the said commissioners or trustees or other persons as aforesaid for that purpose, without any warrant or other authority than this Act, to seize (*i*), any such stall board, show board, chopping block, basket, wares, merchandise, casks, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, together with the horse or horses, ass or asses, mule or mules, if any shall be thereunto belonging, with the harness, gear, and accoutrements thereof, or any such timber or other materials, or other matters or things aforesaid, or any of them; and in case any of the wares, goods, and merchandises so seized shall be perishable, or shall be articles of food, then the same shall be immediately forfeited, and such person or persons who shall seize the same shall deliver the same or cause the same to be delivered to the churchwardens or overseers of the poor, or to some of them, or to the master of any workhouse situate in the said parochial or other district, or of the parish whereunto such district shall belong;

(*i*) **Lawful to seize.** The power to seize wares, &c., placed on the footways and carriageways and not removed when required by the local authority, is not dependent upon the existence of a conviction, but may be exercised although there has not been a conviction. *Brackley* v. *St. Mary, Islington*, 23 Q. B. D. 486; 58 L. J. Q. B. 589.

57 Geo. 3, ch. xxix.

and the same shall and may be given and distributed by him or them unto one or among any one or more of the poor inhabitants of the said parochial or other district, or of such workhouse, to and for his or their benefit; but otherwise such person or persons shall cause the stall board, basket, cask, goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage, horse or horses, asses or mules, or any materials and things so seized to be removed to any place appointed for the reception thereof in any such parochial or other district, if any such there be, and otherwise to such place or places as he or they shall judge convenient, giving parole or written notice of such place or places whereunto the same shall be removed unto the owner, driver, or other person having any interest in the goods, coach, cart, wain, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriages, horses, asses, mules, materials, or other things so seized or removed, if he, she, or they shall be then and there present; and the same shall be there kept and detained until such owner, driver, or other person interested therein as aforesaid shall cause to be paid the said penalty, together with the charges for taking or removing the same, and of keeping such horse or horses, asses or mules, if any; and in case the goods, carriage, horses, materials, or other things so removed (not being perishable or articles of food) shall not be claimed, and the said penalty and charges be paid, within five days next after such removal thereof, then and in every such case it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or their surveyor of the pavements, or any other person to be appointed by the said commissioners or trustees or other persons as aforesaid, to order the same to be appraised and sold; and the overplus of the money arising by such sale shall be returned to the owner or owners thereof, if he or they shall have given such notice as aforesaid, after deducting the said penalty, and such costs, charges, and expenses attending such seizing, removing, keeping, appraising, and selling the same, as the said commissioners or trustees or other persons as aforesaid, or any surveyor of the pavements in any parochial or other district, shall ascertain and allow.

For the removal of nuisances and annoyances, a repetition of notices unnecessary.

66. In all cases where by this Act, or by any local Act or Acts of Parliament relating to any parochial or other district within the jurisdiction of this Act, it may be directed, required, and provided that any person or persons setting or placing any stall board, chopping block, basket, wares, merchandise, pipe, barrel, cask, or vessel, goods, timber, stones, bricks, lime, or any other materials, matters, or things, or causing or procuring the same or any of them to be set or placed upon any of the carriage or foot pavements or otherwise, contrary to the regulations herein or in any such local Act or Acts contained, in any of the streets or public places within the jurisdiction of this Act, or that any person or persons driving or placing any coach, cart, waggon, dray, wheelbarrow, handbarrow, sledge, truck, or other carriage in or upon or over any of the foot pavements in any streets or places within the jurisdiction of this Act, or causing or procuring the same to be so driven or placed, shall have notice and be required to remove the same previous to such person or persons being subject or liable to the penalty or penalties imposed by virtue of such local Act or Acts or of this Act, and to the seizure, forfeiture, appropriation, appraisement, or sale of any such goods, materials, matters, and other things, coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, in manner directed by such local Act or Acts or by this Act, then if any person or persons shall set or place any goods, materials, matters or other things, or shall set, place, or drive any coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages upon or over the said pavements, or any of them, or any part thereof, at any time or times subsequent to his, her, or their having received such notice, or having been required to remove the same, or any other goods, materials, matters, or things, or any other coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages from off the said pavements or any of them, or shall cause or permit the same or any of them to be set or placed or driven by his or their servants, or by any person or persons employed by him or them; in any and every such case it shall not be necessary or requisite that any person or persons, seeing such offence or offences committed again, should require the removal of the said goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages; but the same or any of them, being so again set, placed, or driven in, upon, or over the said

pavements or any of them, or any part thereof, contrary to the directions of any such local Act or Acts of Parliament, or of this Act, shall and may be seized, forfeited, removed, applied, detained, appraised, and sold, in manner herein provided as to any other goods, materials, matters, or things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, which shall not be removed on a requisition or notice being given so to do as hereinbefore provided; and the person or persons so committing the said offence or offences, and the owner or owners of the goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages which shall be so placed or driven, and the master or masters, employer or employers of the person or persons so offending, shall be subject and liable to the same penalty or penalties, forfeitures, proceedings, charges, and punishments, as if such person or persons offending had neglected or refused to remove the said goods, materials, matters, or other things, or coaches, carts, waggons, drays, wheelbarrows, handbarrows, sledges, trucks, or other carriages, when required so to do, under and by virtue of any local Act or Acts of Parliament, or of this Act, and although the said notices or requisitions shall not have been repeated or again given to the person or persons committing or directing or permitting such offence or offences, or any of them; anything in this Act or in any local or other Act or Acts of Parliament to the contrary thereof in anywise notwithstanding. 57 Geo. 3, ch. xxix.

67—68. [*Rep. by the Public Health (London) Act*, 1891, *sec.* 142, *ante.*]

69. If any person or persons at any time or times hereafter shall sift, screen, or slack, or cause to be sifted, screened, or slacked, any lime in any street or public place (*j*) in any parochial or other district within the jurisdiction of this Act, or shall cause the same to be so done, without the consent of the commissioners or trustees or other persons having the control of the pavements in the streets or public places in such parochial or other district, or of their surveyor or surveyors of pavements for the time being, and without also previously erecting a hoard or inclosure, with the licence of the surveyor or surveyors of the pavements in any such parochial or other district first obtained, as directed in any local Act or Acts of Parliament relating to any such parochial or other district, or in this Act, and which hoard or inclosure shall inclose all such lime when and as it shall be sifted, screened, or slacked; then he, she, or they shall forfeit and pay for every such offence a sum not being less than forty shillings nor exceeding five pounds, to be recovered in the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act. Lime not to be slacked in the streets.

70. If at any time or times hereafter the owner or owners, occupier or occupiers, of any house, building, or premises, in any parochial or other district within the jurisdiction of this Act, having any iron or wooden rails or bars over the areas or openings to any kitchens or cellars or other part or parts of his or their house, building, or premises, beneath the surface of the foot pavements of any streets or public places (*k*) in any such parochial or other district, or having any doorway or entrance into the basement or cellar storey thereof, shall not either keep the same, or the walls of such kitchens or cellars, in sufficient and good repair, or safely and securely guard and constantly keep the same securely guarded by a rail or rails, or cover the same over with a strong flap or trap-door, according to the nature of the case, and to the satisfaction of the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or of the surveyor or surveyors of the pavements in any such parochial or other district for the time being, or of any inspectors or other officers or persons appointed by the said commissioners, trustees, or other persons as aforesaid, or some of them, and so as to prevent danger to persons passing and repassing; or if any such occupier or occupiers do or shall leave open, or not sufficiently and substantially cover and keep covered and secured to such satisfaction as aforesaid, any coal or other hole, funnel, trap-door, or cellar-flap, belonging to or connected with his, her, or their respective houses, buildings, or premises (save and except only during such reasonable time as any coals, wood, casks, or other things shall be putting down or taking Entrances to cellars and coal holes to be covered and secured.

(*j*) **Slacking lime in streets.** This is also an offence under the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), sec. 60 (1).

(*k*) **Cellars and vaults.** For provisions regulating the construction and repair of vaults and cellars under streets, see the Metrop. Man. Act, 1855, secs. 101 and 102, *ante*, p. 151.

57 Geo. 3, ch. xxix.

out of any such vault or basement storey, or during such reasonable time as the flap, trap-door, or covering thereof shall be altering, repairing, or amending): or if such owner or owners, occupier or occupiers, shall not repair, and from time to time keep in good and substantial repair to the satisfaction of the said commissioners or trustees or other persons, or of the said surveyor or surveyors, inspectors, or other persons appointed by the said commissioners or trustees or other persons as aforesaid, all and every or any such iron or wooden rails, guard rails, flaps, trap-doors, and other covering; then and in every such case the person or persons neglecting so to do shall for every or any such offence forfeit and pay any sum not being less than forty shillings nor exceeding five pounds, to be recovered in such and the same manner in which other penalties are hereafter directed to be recovered by virtue of this Act; and that in any or either of such cases of neglect, it shall and may be also lawful to and for any two or more of the said commissioners or trustees, or other persons as aforesaid, and without the authority of any public or general meeting, or for their surveyor or surveyors of the pavements for the time being, or for their inspectors, or for any other person by such commissioners or trustees or other persons appointed as aforesaid, to cause all and every such door-ways, entrances, holes, and funnels to be well and securely covered over and guarded, and all iron or wooden rails, or guard rails, flaps, traps-doors, or coverings, to be well and substantially repaired or renewed, by such person or persons as they shall think proper to employ, and with such materials and in such manner as they or he may direct, and that all the costs, charges, and expenses attending the same be ascertained and certified by the surveyor or surveyors of the pavements, in any such parochial or other district, and shall be borne and paid by the owner or owners, occupier or occupiers, or other person or persons so neglecting to repair and make good the same in manner aforesaid; and that if such costs, charges, and expenses shall not be so paid by such person or persons to the said surveyor or surveyors, or to such other person or persons as he or they shall or may appoint to receive the same within twenty-four hours after an account of the costs, charges, and expenses so ascertained and certified shall have been given to or left for such person or person, at or on such houses, buildings, or premises, then double the amount of the sum so certified shall become due and payable from such person or persons, over and above the other penalties hereby imposed, and shall and may be recovered and levied in such and the same manner in which any other penalties are hereinafter directed to be recovered, or in which any moneys may be recovered from any water or gas light companies, or any other persons, for or on account of any costs and charges of relaying any pavements, by virtue of any local Act or Acts of Parliament relating to such parochial or other districts, or of this Act.

Holes excavated for vaults to be inclosed (*l*).

71. If at any time or times hereafter any person or persons shall dig or make or cause to be dug or made any hole, or leave or cause to be left any hole before any vacant ground, or before or behind or on the side of any house or other tenement or building erected or being erected or about to be erected in and adjoining to any street or public place formed or to be formed or forming in any parochial or other district within the jurisdiction of this Act, for the purposes of making any vault or vaults, or the foundation or foundations to such houses or other buildings, or for any other purpose whatsoever, and shall not forthwith inclose the same in a good and sufficient manner, to the satisfaction of the surveyor or surveyors of the pavements for the time being to the commissioners or trustees or other persons having the control of the pavements in such parochial or other district, or shall keep up or cause to be kept up and continued any such inclosure for any time which shall be longer than shall be absolutely necessary in the opinion of the said commissioners or trustees or other persons as aforesaid, or of their surveyor or surveyors of pavements for the time being, or shall not, when thereunto required by such surveyor or surveyors, or either of them, well and sufficiently fence or enclose any such hole or holes, or area or areas, or space or spaces opened or left open, and intended for an area or areas, foundation or foundations, or for any other purpose whatsoever, in the front of or behind or on the side of such vacant ground, house, or other tenement or building in and adjoining to any such street or public place formed or to be formed or forming, within six hours after he or they shall be required so to do by the said surveyor

(*l*) **Cellars and vaults.** See note (*k*) on page 507.

or surveyors of pavement, and in the manner and with such materials as he or they shall direct, and to his or their satisfaction, then and in every or any such case he or they so offending shall forfeit and pay for every such offence, and for every such refusal or neglect, any sum not being less than forty shillings nor exceeding five pounds, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act. 57 Geo. 3, ch. xxix.

72. [*Encroachments and projections to be regulated. Impliedly repealed by the Metrop. Man. Act*, 1855, *sec.* 119, *ante*. *Fortescue* v. *St. Matthew, Bethnal Green* (1891), 2 *Q. B.* 170; 60 *L. J. M. C.* 172; *overruling St. Mary, Islington* v. *Goodman*, 23 *Q. B. D.* 154; 58 *L. J. M. C.* 122.]

73—74. [*Rep. by the Public Health (London) Act*, 1891, *sec.* 142, *ante*.]

75. No person or persons whomsoever shall erect, place, set up, or build, in any street or other public place in any parochial or other district within the jurisdiction of this Act at any time or times hereafter, any hoard or scaffolding (*m*), or place or erect any posts, bars, rails, boards, or other thing, by way of inclosure, for the purpose of making mortar, or of depositing or sifting, screening, or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, or for other works, or for any other purpose, without leave or licence first had and obtained under the hand or hands of the surveyor or surveyors for the time being of the pavements of such parochial or other district, who is and are hereby required to grant the same forthwith for the purpose of making mortar, and depositing or sifting, screening or slacking any bricks, stone, lime, sand, or any other materials for building or repairing any house or other tenement or erection, specifying therein the length of time for which the same when so erected or set up may be continued, and giving such other directions respecting the same as he or they may think necessary on being paid by every person so applying for such licence the sum of two shillings and sixpence; and that if any person or persons shall erect, place, set up or build, or cause or permit to be erected, placed, set up, or built, any such hoard or scaffolding or any inclosure, posts, bars, or rails, or any other matter or thing for the purposes aforesaid, or for any other purpose, without the leave or licence, signed as aforesaid, of the said surveyor or surveyors of the pavements so had and obtained, or shall erect, set up, or build the same, or cause or permit the same to be set up or erected in any other manner, or to be continued for any longer time than shall be allowed or expressed in such licence, then and in either of the said cases such person or persons, or the person or persons by whom he or they shall or may be employed, shall forfeit and pay the sum of ten shillings for every day that the same shall have been and shall be set up and continued; and also that it shall and may be lawful for the said commissioners or trustees or other persons having the control of the pavements of such parochial or other district, or for the said surveyor or surveyors of the pavements for the time being, to cause the same to be pulled down and removed, and the same and all the materials thereof, and of every part thereof, to be kept and detained until such person or persons shall and do pay to the said surveyor or surveyors of the pavements, or to the person or persons in whose custody the same shall be, all the penalties incurred by such person or persons, together with the charges of pulling down, removing, and keeping the same, to be ascertained and determined by the said surveyor or surveyors; and in case the same shall not be claimed, and the said penalties and charges aforesaid shall not be paid within the space of five days next after the pulling down and removal thereof, then it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, or for their surveyor or surveyors of the pavements, to order or cause the same to be appraised and sold; and the money arising therefrom, after deducting all the said charges, shall be paid to the treasurer or treasurers of the said commissioners or trustees or other persons as aforesaid, or to such other person or persons as they from time to time shall or may direct or appoint. Hoards to be erected, but not without leave.

76. [*Commissioners may direct streets to be distinguished and houses to be numbered. See now the London Building Act*, 1894, *secs.* 32—38, *ante*.]

(*m*) **Hoards.** This section does not extend to ladders placed against a house for the purpose of whitewashing it. *Davey* v. *Warne*, 14 M. & W. 199; 15 L. J. Ex. 253. For further provisions as to the erection of hoards, &c., see the Metrop. Man. Act, 1855, secs. 121—123, and notes thereto, *ante*, pp. 158—160.

57 Geo. 3, ch. xxix.

77. [*Streets may be watered. See now the Metrop. Man. Act*, 1855, *secs.* 90 *and* 116, *ante.*]

78. [*But rates not to be made until three-fourths of the inhabitants of any street request the same to be watered. See now the Metrop. Man. Act*, 1855, *sec.* 116, *ante.*]

Courts may be stopped up with the approbation of two or more justices, and with the consent of the owners of contiguous property.

79. And whereas there are in certain parochial or other districts within the jurisdiction of this Act certain courts, alleys, and places which, without inconvenience to the public, might be discontinued and stopped up, and which, from their private and confined situation, and by being harbours or receptacles for filth and rubbish (*n*), are noisome and offensive: Be it therefore further enacted, that if upon the view of any two or more of his Majesty's justices of the peace for the city, borough, or county wherein such court, alley, or place may be situate, it shall to them appear that any such court, alley, or place is become unnecessary, and may, without inconvenience to the public, or to the owners of houses or tenements adjoining thereto, be discontinued and stopped up, then and in such case it shall and may be lawful to and for such justices, by and with the consent of the commissioners or trustees, or other persons having the control of the pavements of the streets and public places in such parochial or other district, testified by writing under the hand of the clerk or clerks to such commissioners or trustees, or other persons as aforesaid for the time being, and by and with the consent of the owner and owners of the houses, lands, or tenements adjoining to four parts in five in the length of any such court, alley, or place, testified by writing under his, her, or their hand or hands, at any special session to be holden for that purpose, by order under the hands and seals of such justices, to discontinue and stop up any and every such court, alley, or place; and all such courts, alleys, and places, or such proportion thereof as may adjoin to the houses or tenements of such person who shall have so consented, shall be discontinued and stopped up accordingly (*o*), subject to appeal as hereinafter is mentioned (*p*): Provided always, that nothing herein contained shall extend or be construed to extend so as to authorise the discontinuing or stopping up any court, alley, or place, or any part or parts thereof, whereby or in consequence whereof any house, tenement, or land shall be so inclosed (unless with such consent as aforesaid), that the owner or owners thereof shall be prevented from passing freely to and repassing freely from such house, tenement, or land.

Streets may be widened and improved with consent of owners.

80. For the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this Act, and for the public advantage, it shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavement of any parochial, or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary

(*n*) **Receptacles for filth or rubbish.** The justices have power to grant an application to close a confined passage, which has not at the time become a receptacle for filth or rubbish, if they are satisfied that it is likely to become a harbour or receptacle for filth or rubbish. *Reg.* v. *Cloete*, 55 J. P. 310; 64 L. T. (N. S.) 90.

(*o*) **Courts, &c., may be stopped up.** Further provisions for stopping up, diverting, and turning highways are contained in the Highway Act, 1835 (5 & 6 Will. 4, c. 50), secs. 84—91. That Act applies to London (*Back* v. *Holmes*, 57 L. J. M. C. 37; 51 J. P. 693); but by sec. 112 nothing in that Act shall be construed to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in the present Act.

(*p*) **Appeal.** See sec. 133, *post.*

for that purpose (*q*), it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat (*r*), contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local Act or Acts of Parliament relating to such parochial or other districts, or of this Act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local Act or Acts of Parliament relating to such parochial or other district, or by virtue of or contained in this Act, in the same manner as the present streets and public places included in any such local Act or Acts, or within the jurisdiction of this Act, and the owners and occupiers of houses or buildings and messuages or other hereditaments therein and adjoining thereto.

Corporate or collegiate bodies and incapacitated persons enabled to sell.

81. It shall and may be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, femes covert, guardians, trustees, and feoffees in trust for charities or other purposes, committees, executors, or administrators, and all other persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestuique trusts, whether infants, issue unborn, lunatics, idiots, femes covert, or others, and for all and every other person or persons whomsoever who are and shall be seised, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or

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(*q*) **Necessary for that purpose.** The local authority cannot take compulsorily the whole of a house unless they have formally adjudged that possession of the whole is necessary for the purpose of the proposed improvement. *Thomas* v. *Daw*, L. R. 2 Ch. App. 1; 36 L. J. Ch. 201. And they cannot validly adjudicate that a property is required for the purpose of an improvement until they have determined what the improvement is to be so far as to furnish materials for judging whether the property is required. *Lynch* v. *Commissioners of Sewers of City of London*, 32 Ch. D. 72; 55 L. J. Ch. 409. Nor can they adjudge that the whole of a piece of land is necessary for an improvement, when they intend only to use a small part for that purpose; though if they make such adjudication in the belief that they require the whole for the improvement, the correctness of their adjudication cannot be questioned. *Gard* v. *Commissioners of Sewers of City of London*, 28 Ch. D. 486; 54 L. J. Ch. 698. If part of a piece of land prevents an improvement, the local authorities have power to take such part only, their power of proceeding compulsorily not being limited to the whole. *Ib.* Where part only of a house obstructs the proposed improvement, the local authority cannot be compelled to take the whole house, provided the removal of such part does not involve a substantial alteration in the character and condition of the house, so that it can no longer be used as the same kind of building or for the same kind of business as before. *Gordon* v. *St. Mary Abbott's, Kensington* (1894), 2 Q. B. 742; 63 L. J. M. C. 193. And where part only of a building or site is required for an improvement, the local authority cannot take the whole if the owners wish to sell the part required only. *Teuliere* v. *St. Mary Abbott's, Kensington*, 30 Ch. D. 642; 55 L. J. Ch. 23.

(*r*) **Power to treat.** A notice to treat is binding on the local authority giving it. *Birch* v. *St. Marylebone Vestry*, 20 L. T. (N. S.) 697; 17 W. R. 1014.

57 Geo. 3, ch. xxix.

other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid by feoffment, lease and release, or bargain and sale, by deed indented and enrolled in any of his Majesty's courts of record at Westminster, for such valuable consideration as shall be bonâ fide agreed upon for such houses, lands, tenements, or hereditaments as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be bonâ fide made for the purpose aforesaid shall be good and effectual in the law to all intents and purposes; anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are unable to treat, &c., a precept to be issued for impannelling a jury,

82. If any body or bodies politic, corporate, or collegiate, or any other person, or persons seised or possessed of, or interested in any such houses, buildings, lands, tenements, or hereditaments, as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners, or trustees, or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this Act, or with any person or persons authorised by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners, or trustees, or other persons as aforesaid, or of the person or persons so authorised by them, then and in every such case it shall be lawful for the said commissioners, or trustees, or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorised, directed, and required accordingly to impannel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two; and out of such persons so to be impannelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners, or trustees, or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in his Majesty's Courts at Westminster, are by an Act made in the third year of his late Majesty King George the Second, intituled "An Act for the better Regulation of Juries," are directed to be drawn (*s*); which persons so to be impannelled, summoned, or returned as aforesaid, are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array; and the said justices are hereby authorised and empowered, by precept or precepts, from time to time, as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or witnesses on his, her, or their oath or oaths, touching or concerning the premises; and the said justices, if they think fit, shall and may on the application of either party, likewise authorise the said jury to view the place or places or premises in question, in such manner as they shall direct; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings, lands, tenements, or

who are to be drawn as 3 Geo. 2, c. 25, direct.

Jurymen may be challenged.

Justices, on the application of either party, may direct a view of the premises.

Jury to assess the value on oath.

(*s*) **Juries.** 3 Geo. 2, c. 25, was repealed by the Juries Act, 1825 (6 Geo. 4, c. 50), sec. 62, and is superseded by that and its amending Acts.

hereditaments (*t*) and of the proportionable value of the respective estates and interest of all and every person or persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof, and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this Act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed; which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon, (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling-house of such person or persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued), shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femes covert, and persons under any other legal incapacity or disability, as all other cestuique trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and determinations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorised by them, shall have previously offered to pay as and for such value, recompense, and satisfaction, then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate or collegiate, or other person or persons so seised or possessed of or interested in such houses, buildings, lands, tenements or hereditaments, and so refusing to treat and agree as before mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorised and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof: provided always, that in all cases where any person or persons shall by reason of absence have been prevented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid (*u*).

57 Geo. 3, ch. xxix.

Verdict of the jury, &c., to be final, previous notice being given to the parties interested.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, &c., to be paid by such body politic, &c.,

and the commissioners, &c., may retain the same out of the sum so assessed.

(*t*) **Value of such houses, buildings, &c.** Where under sec. 80, *supra*, notice had been served on the owners of four houses, requiring them to treat, the local authority were not allowed to summon a jury to assess the value of one of the houses separately. *Ecclesiastical Commissioners* v. *Commissioners of Sewers of City of London*, 14 Ch. D. 305; 28 W. R. 824. See also note (*q*) to sec. 80, *supra*.

(*u*) **Costs of assessment.** Where land is taken compulsorily for an improvement, and the owner's compensation is assessed by a jury, the Court has no jurisdiction to order the local authority to pay the costs of the trial, notwithstanding that there may be no offer from such local authority, and that they unsuccessfully contested the owner's title. *Reg.* v. *London JJ., Ex parte Phelps* (1895), 1 Q. B. 881; 64 L. J. M. C. 186.

57 Geo. 3, ch. xxix.

Justices empowered to impose fines for non-attendance.

83. The said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of twenty pounds, on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this Act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a copy of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

Application of compensation where exceeding 200*l.*

84. If any money shall be agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this Act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons, under any other disability or incapacity, such money shall, in case the same shall amount to the sum of two hundred pounds, with all convenient speed be paid into the Bank of England in the name and with the privity of the accountant-general of the High Court of Chancery, to be placed to his account there ex parte the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this Act, wherein such lands, buildings, tenements, or hereditaments, shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said court shall authorise to be paid, affecting the same lands, buildings, tenements, or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments, which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the said accountant-general, in his name, in the purchase of three pounds per centum consolidated or three pounds per centum reduced bank annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the

rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made (*x*).

57 Geo. 3, ch. xxix.

Application where the compensation does not exceed 200*l.* nor less than 20*l.*

85. Provided always, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank in the name and with the privity of the said accountant-general of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees or other persons as aforesaid (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in any manner hereinbefore directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the Court of Chancery.

Application where the money is less than 20*l.*

86. Provided also, that where such money so agreed or awarded to be paid as next before mentioned shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this Act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

On payment of the purchase money premises to vest in commissioners, &c.

87. Upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this Act directed (as the case may be), the said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees or other persons as aforesaid for the time being, in manner and for the purposes aforesaid, who shall be deemed in law to be in the actual possession thereof, to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the lands, &c., at the time of such purchase, shall be deemed entitled thereto according to such possession, unless, &c.

88. Provided always, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Chancery, in pursuance of this Act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments, at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to same estate or interest therein.

(*x*) **Costs of investment, &c.** See sec. 89, and note thereto, *post*.

57 Geo. 3, ch. xxix.

The Court of Chancery may order reasonable expenses of purchases to be paid by the commissioners, &c.

89. Provided also, that where by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments, to be purchased, or purchased under the authority of this Act, the purchase money for the same shall be required to be paid into the Court of Chancery (*y*), and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this Act, it shall be lawful for the said Court of Chancery to order the expenses of all purchases from time to time to be made in pursuance of this Act, or so much of such expenses as the said court shall deem reasonable, to be paid by the said commissioners or trustees or other persons as aforesaid, who shall from time to time pay such sums of money for such purposes as the said court shall direct (*z*).

Tenants at will, &c., to deliver possession on six months' notice.

90. Every tenant at will or lessee for a year, or any other person or persons in possession of any such houses, buildings, lands, tenements, and hereditaments, or any part thereof, which shall be purchased by virtue and for the purposes of this Act, and who shall have no greater interest in the premises than as tenant at will or lessee for a year, or from year to year, shall deliver up the possession of such premises to the said commissioners or trustees, or other persons as aforesaid having the control of the pavements in the streets or public places in the parochial or other division within the jurisdiction of this Act, wherein such houses, buildings, lands, tenements, and hereditaments, or to such person or persons as the said commissioners or trustees or other persons as aforesaid shall appoint to take possession of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees or other persons as aforesaid, or from the person or persons so authorised by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid or the person or persons authorised by the said commissioners or trustees or other persons as aforesaid to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments, is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorised and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods.

Mortgagees on tender of principal and interest to convey;

91. All and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements, and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months interest on the said principal, by the said commissioners

(*y*) **Purchase money paid into Court.** See sec. 84, *ante*.

(*z*) **Expenses.** The Court has jurisdiction under the above section to order payment of the costs of an interim investment in consols, including the costs of a petition for the purpose. *Merceron, In re*, 7 Ch. D. 184; 47 L. J. Ch. 114. Also the amount of the costs of a petition for payment out of Court, and of separate accounts of the purchase money. *Saunders Estate, In re*, L. R. 8 Eq. 681; *Fisher, In re* (1894), 1 Ch. 450; 63 L. J. Ch. 235.

or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district within the jurisdiction of this Act, wherein the said houses, buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other persons as aforesaid, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the day of giving such notice, that then at the end of the said six calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as shall be appointed in trust for them; and in case the mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine.

on refusal, interest to cease.

92. Provided always, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this Act, then the said commissioners or trustees or other persons as aforesaid shall not be liable to pay to the mortgagee or mortgagees more than such real value of such premises, so ascertained as aforesaid.

The mortgagees not to be paid more than the real value of premises.

93. The conveyance of any such estate or interest of any feme covert to the said commissioners or trustees or other persons as aforesaid for the time being, or any five or more of them, or any person or persons in trust for them, by indenture or indentures of bargain and sale, sealed and delivered by such feme covert in the presence of and attested by two credible witnesses, and duly acknowledged, and to be enrolled in the High Court of Chancery within six calendar months after the making thereof, shall as effectually and absolutely convey the estate and interest of such feme covert in the premises as any fine or fines, recovery or recoveries, would or could do, if levied or suffered thereof in due form of law; and further, that all bargains and sales whatsoever to be made of any such houses, buildings, lands, tenements, and hereditaments, as shall be purchased by the commissioners or trustees or other persons as aforesaid for the time being, by virtue and for the purposes of this Act, and enrolled as aforesaid, shall have the like force, effect, and operation in law, to all intents and purposes, as any fine or fines, recovery or recoveries whatsoever would have had if levied or suffered by the bargainer or bargainers, or any person or persons seised of or entitled to any estate or interest in the premises in trust for such bargainer or bargainers, in any manner or form whatsoever (*a*).

Bargains and sales to have the force of fines and recoveries.

94. Upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

Upon payment of principal and interest into the bank, premises to vest in the commissioners, &c.

95. All sums of money, or other consideration, recompense or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to the same, or paid into the Bank of England as aforesaid, before the

Moneys to be paid or tendered before any use made of the premises.

(*a*) **Fines and recoveries.** See the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), secs. 79—92; and *Drummond and Davies' Contract, In re* (1891), 1 Ch. 524; 60 L. J. Ch. 258.

57 Geo. 3, ch. xxix.

said commissioners or trustees or other persons as aforesaid, or any person or persons authorised by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any of the purposes before mentioned in this Act.

Estates may be sold, the persons of whom they were bought having the first offer.

96. It shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises which shall hereafter be conveyed to them in pursuance of this Act or otherwise; Provided the said freehold or leasehold estates, lands, houses, hereditaments, and premises so purchased are first offered for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid (*b*); and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as hereinafter mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively, an affidavit shall be made and sworn before a master in the High Court of Chancery, or before one of his Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respectively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same was so offered; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made and was not agreed to, or was refused by the person or persons to whom such offer was made, as the case may be; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners or trustees or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner hereinbefore directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this Act; and the expense of hearing and determining such differences shall be borne and paid in like manner as hereinbefore directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*); and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises, shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local Act or Acts of Parliament relating to the parochial or other division over the pavements whereof they shall possess a control, or to the purposes of this Act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

97—108. [*Power to borrow money. Superseded by the Metrop. Man. Act*, 1855, *sec.* 183, *et seq.*, *ante.*]

Commissioners may meet and may have offices and places where strays or goods may be impounded.

109. It shall and may be lawful to and for the commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this Act, from time to time and at all times afterwards to assemble and meet together for the execution of the local Acts or Acts of Parliament whereby or by virtue whereof they may have been appointed, and of this Act, within their respective parochial or other district, or elsewhere, and may adjourn such meetings from time to time as they shall think proper; but that one such general meeting shall be held at least once in every calendar month, and that five or more of such commissioners

(*b*) **First offered to person from whom purchased.** The right of pre-emption given by this section is not taken away by the City of London Sewers Act, 1851 (14 & 15 Vict. ch. xci.), sec. 54. *Gard* v. *Commissioners of Sewers of City of London*, *ante*, p. 511.

or trustees or other persons shall attend at and be necessary to constitute every such general meeting; and the acts, resolutions, and proceedings of the majority present at such meetings shall be deemed and considered to be the acts, resolutions, and proceedings of such meetings; and that such commissioners or trustees or other persons as aforesaid may retain and employ and discharge and pay such clerks, surveyors, inspectors, and other persons, as they from time to time shall deem expedient; and also shall and may deduct and allow to themselves and to each other, and to their officers and servants, all expenses necessarily incurred in and about the execution of any local Act or Acts of Parliament, or of this Act; and also shall and may from time to time purchase or rent upon lease, for a term or terms of years or otherwise, or may erect, furnish, alter or improve any houses, offices, and other places which they may deem necessary or expedient for their places of meeting, or for the transaction of their official business, or for the deposit and safe custody of their books, vouchers, and documents; and also may purchase or rent upon lease or otherwise from time to time such place or places to be called "The Green Yard," for such parochial or other district, for the reception, deposit, and safe custody of any article seized and removed by virtue of any local Act or Acts of Parliament, or of this Act, within their respective parochial or other districts, or of any horses, beasts, cattle, or any animals or other things which may be found straying, or which shall be in or about any streets or public places within their respective parochial or other district, or which, according to any local Act or Acts of Parliament, or to this Act, or to the common or statute law, may be impounded; and may appoint any person or persons to inhabit and take care of such houses, offices, and other places of meeting, and to have the custody and care of such books, vouchers, and documents, and to take care of and superintend such places of deposit as aforesaid; and may appoint the fees and charges which shall be paid and payable, and which may be demanded on or for the deposit and safe custody of any such articles so seized, or of any horses, beasts, cattle, animals, or other things which shall be there impounded as aforesaid; and that the same fees and charges shall be so paid before any such articles or things shall be given up or restored to any persons whomsoever, or shall and may be deducted out of the proceeds of any appraisement or sale of any such articles and things, and which may be effected thereof under and by virtue of any local Act or Acts of Parliament, or of this Act.

110—121. [*Meetings, proceedings, accounts, actions. Superseded by the Metrop. Man. Act, 1855, ante.*]

Commissioners and surveyors not to be obstructed in performance of their duty.

122. If any person or persons shall at any time or times hereafter in any manner whatsoever wilfully obstruct, hinder, or molest any commissioners or trustees or any other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any surveyor or surveyors of pavements, or any other officer or officers, person or persons whomsoever, who are or shall be appointed or employed to put in execution this Act or any local Act or Acts of Parliament by the said commissioners or trustees or other persons having the control of the pavements of the streets and public places in any such parochial or other district within the jurisdiction of this Act, in the performance or execution of his or their duty, then every person or persons so offending shall for the first offence forfeit the sum of five pounds, and for the second offence the sum of ten pounds, and for the third or any subsequent offence the sum of twenty pounds, to be recovered in the same manner in which other penalties are hereinafter directed to be recovered by virtue of this Act.

Justices may proceed on complaint of commissioners.

123. In all cases where one or more justice or justices of the peace is or are or may be empowered by law to proceed on the complaint of the commissioners or trustees, or other persons having the control of the pavements in any streets or public places in any parochial or other district within the jurisdiction of this Act, or any of them, it shall and may be lawful for such justice or justices of the peace, and he or they is and are hereby required to proceed on the complaint of any one of the said commissioners or trustees or other such persons, or of their surveyor or surveyors of the pavements, or of their clerk or clerks for the time being, or any of them, or of any person or persons whom they or any two or more of them by writing under their hands shall appoint for that purpose, in such and the like manner to all intents and purposes as if such complaint had

57 Geo. 3, ch. xxix.

been made by such commissioners or trustees or other such persons as aforesaid, or any or all of them.

124. [*Two commissioners may act where a greater number is not required by any local Act or by this Act. Superseded by the Metrop. Man. Act, 1855, ante.*]

125—132. [*Proceedings before justices, &c. Superseded by the Metrop. Man. Act, 1855, and amending Acts, ante, and the Summary Jurisdiction Acts.*]

Persons aggrieved may appeal.

133. Provided always, that if any person or persons shall think himself, herself, or themselves aggrieved by any conviction or order of any justice or justices of the peace acting in and for any city, borough or county within the jurisdiction of this Act, for any offence committed against any local Act or Acts of Parliament relating to any parochial or other district within the jurisdiction of this Act, or against this Act, it shall and may be lawful to and for such person or persons to appeal to the next general or quarter sessions of the peace. . . .

134—135. [*Justices to deliver recognizances to the clerk of the commissioners, &c. Proceedings not to be quashed on formal objections; nor removable by certiorari.*]

136. [*Limitation of actions. See now the Public Authorities Protection Act, 1893, post, vol. ii.*]

137. [*The powers conferred on commissioners and trustees to belong to vestrymen, committees, courts, and all other persons having the control of pavements. See now the Metrop. Man. Act, 1855, sec. 90, ante.*]

138. [*Local Paving Acts of Parliament not hereby repealed.*]

139. [*Provisions of the Act not to affect the estate of the Marquis Camden in Saint Pancras.*]

140. [*Nor the estate of Lord Sommers.*]

141. [*Nor the Westminster, nor Surrey, &c., commissioners of sewers.*]

142. [*Nor to authorise the removing in any thoroughfare, without consent of the owner of the estate, of any bar, gate, &c. See now the Metrop. Man. Amend. Act, 1862, sec. 72, ante.*]

143. [*Provisions of the Act not to extend to parishes of Saint Mary, Islington, and Saint John, Hackney. Rep. by the Metrop. Man. Act, 1862, sec. 73, ante.*]

Certain provisions in the Act of the 56 Geo. 3, c. 128, not to be affected by this Act.

144. And whereas by an Act passed in the fifty-sixth year of the reign of his present Majesty (*d*), intituled "An Act to amend two Acts made in the fifty-third year of the reign of his present Majesty, for opening a more convenient Communication from Marylebone Park to Charing Cross and for Paving the Streets to be made in Marylebone Park; and to enable his Majesty to grant small Portions of Land as Sites for Public Buildings, or to be used as Cemeteries within the Bills of Mortality," it was enacted, that it should be lawful for the commissioners for executing that Act to authorise and permit the building or erecting and making of any porticoes, arcades, and other covered ways projecting from any buildings or houses which should or might be built on the sides of the new streets, squares, circusses, ways, courts, passages, or places comprised within the provisions of the said Act, extending over any footways of the said streets, squares, circusses, ways, courts, passages, or places under the restrictions therein mentioned; and to permit the erecting or making, or continuing or suffering to remain, the fronts of any houses or buildings in the said streets, squares, circusses, ways, courts, passages, and places, in such manner as that some fronts might recede behind or advance before others, and with bow windows or other projections, and with virandas, alcoves, balconies, pilasters, columns, and shop windows, or other projections under the restrictions therein mentioned: Now therefore be it enacted, that nothing in this Act contained shall extend or be construed to extend or alter, abridge, repeal, or affect any of the said provisions in the said recited Act of the fifty-sixth year of the reign of his present Majesty contained, or to authorise or empower any surveyor of

(*d*) **56 Geo. 3, c. 128.** This Act related to Regent's Park and buildings on other Crown lands, and was repealed by 5 Geo. 4, c. 100, sec. 1. See now the Crown Estate Paving Act, 1851 (14 & 15 Vict. c. 95); and the Metropolis Management Act, 1855, sec. 240, and note thereto, *ante*, p. 208.

pavements or other person or persons, to remove or alter, or to require the removal or alteration of any porticoes, arcades, or other covered ways, bow windows, virandas, alcoves, balconies, pilaster columns, architectural ornaments, or other projections which have been heretofore or shall be hereafter authorised or permitted, by the commissioners for the time being for executing the said recited Act, to be made in or to any houses or other erections which shall have been or shall or may be erected or built in any of the streets, squares, circusses, ways, courts, passages, or places comprised within the provisions of the said recited Act of the fifty-sixth year of the reign of his present Majesty. 57 Geo. 3, ch. xxix.

Houses, &c., within the parish of Saint Marylebone, in the line of the new street, or in the Marylebone Park, to be rated at a specific sum.

145. And whereas by the said last-mentioned Act, it was enacted, that such of the houses, buildings, lands, and hereditaments which were intended to be taken and used under the provisions and for the purposes of the first Act therein recited, as are situate in the parish of Saint Marylebone, and also the houses and buildings to be erected on the said lands, should for ever thereafter, in making any rates or assessments for the paving, repairing, watching, lighting, and cleansing the several streets and other places in the said parish of Saint Marylebone be charged and assessed thereto, as being altogether and in the whole of the yearly rent or value of six thousand and eighty-four pounds, and no more; and that the same should for ever thereafter be charged and assessed and rated at the said yearly rent of six thousand and eighty-four pounds, whether the rents or values of the same should be more or less: Be it therefore further enacted, that nothing herein contained shall be construed or extend to alter, repeal, or annul the provisions contained in the said recited Act of the fifty-sixth year of the reign of his present Majesty with relation thereto; but that all such houses, buildings, lands, and hereditaments comprised within the provisions of the said recited Act of the fifty-sixth year of his present Majesty's reign, as are situate within the said parish of Saint Marylebone, shall for all the purposes of this Act be charged and assessed as being altogether and in the whole of the said yearly rent or value of six thousand and eighty-four pounds, and no more; and that the said sum of six thousand and eighty-four pounds shall at all times hereafter, and for all the purposes of this Act, be deemed and taken to be the annual rent or value of all such houses, buildings, lands, and hereditaments, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Not to extend to the estates of the collegiate church of Westminster contiguous thereto.

146. Provided also, and be it enacted, that nothing in this Act contained shall be construed to extend to the collegiate church of Saint Peter, Westminster, which has a pavement of its own to maintain, or to such part or parts of the immediate close thereof which have been hitherto exempt from paving rates; nor to give power to the commissioners or trustees or other persons having the control of the pavements of any parochial or other district under the operation of this Act, to purchase or to pull down any houses, walls, or buildings, being part of the said collegiate church, Westminster school, and the buildings thereto appertaining, situate within the ancient close of the same collegiate church, or in College Street, Dean Street, Smith Street, or The Sanctuary, and which are adjoining to Dean's Yard, or adjoining to any of the houses contiguous to Dean's Yard and the yards or playgrounds belonging to the same houses, anything herein contained to the contrary thereof in anywise notwithstanding.

147. [*Provisions of the Act not to affect turnpike roads.*]

Public Act.

148. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others without being specially pleaded.

COUNTY COUNCILS ASSOCIATION EXPENSES ACT, 1890.

53 Vict. c. 3. An Act to remove doubts as to the Legality of certain Payments by County Councils. [29th March, **1890**

WHEREAS an association of county councils of England and Wales has been formed for the purpose of consultation as to their common interests and the discussion of matters relating to local government:

* * * * * * *

Power to defray expenses in connexion with association of county councils. 51 & 52 Vict. c. 41.

1. The council of an administrative county may pay out of the county fund, as general expenses incurred by them in the execution of their duties under the Local Government Act, 1888, any sum not exceeding thirty-one pounds and ten shillings in any one year, as an annual or other subscription to the funds of the association, as well as any reasonable expenses of the attendance of representatives, not exceeding in any case four, at meetings of the association.

Short title and extent of Act.

2. This Act may be cited for all purposes as the County Councils Association Expenses Act, 1890.

This Act does not extend to Scotland or Ireland.

LONDON COUNCIL (GENERAL POWERS) ACT, 1891.

[54 & 55 Vict. ch. ccvi.]

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PART V.—MARKET INQUIRIES.

Inquiries as to markets.

70. It shall be lawful for the council from time to time to prosecute and conduct inquiries and negotiations relative to such existing markets and market rights as are not the property of or under the control of the mayor, aldermen, and commons of the City of London, and the expediency of establishing new markets in or near the administrative county of London, and any matters relative or incidental thereto, and to pay out of the county fund the costs and expenses of such inquiries not exceeding one thousand pounds.

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LEE VALLEY DRAINAGE ACT, 1892.

55 & 56 Vict. ch. cli. An Act for the Drainage of the Lands in the Valley of the River Lee, &c. [27th June, **1892**

[*This Act constitutes a body of commissioners called the "Lee Valley Drainage Commissioners," for the cleansing, dredging, deepening, &c., of the Old River Lee, and certain other streams, cuts, and ditches. Sec. 4 provides, inter alia, that one commissioner shall be appointed by the London County Council. Sec. 7 provides, inter alia, that the appointment shall be in writing under seal, and may be revoked and another appointment made at any time at the discretion of the council; and that every appointment shall continue in force until notice of the revocation, and new appointment shall be given to the clerk of the commissioners. No other powers or duties under the Act devolve on the county council or the vestries or district boards.*]

LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1892.

[55 & 56 Vict. ch. ccxxxviii.]

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Bridges—Byelaws.

Bridges—byelaws.

40. The powers of the council under the Acts relating to the Metropolitan Board of Works to make and from time to time to alter and vary and enforce byelaws with respect to bridges (*a*) transferred to the council from the said board shall extend and apply to all bridges of which the management is vested in the council under the Local Government Act 1888 (*b*) and to all bridges belonging partly to the council and partly to any other county council or other authority (*b*) Provided that as regards any bridge belonging partly to the council and partly to any such other council or authority no such byelaw shall be made without the consent in writing of such other council or authority.

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LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1893.

[56 & 57 Vict. ch. ccxxi.]

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RECOGNIZANCES ON BEHALF OF COUNCIL.

Recognizances in appeals not to be required.

11. Where by virtue of any Act of Parliament or rules of court or otherwise requiring any party to the prosecution of any appeal or other legal proceeding to enter into any recognizance the council would as such party be required to enter into any recognizance then such requirement shall be deemed to be satisfied on the entry of appeal or undertaking of such proceeding by the council but in every such case the council shall be liable as if recognizances had been entered into for such sum if any as is required by such Act or rules in case of any such appeal and all entries of appeals and other proceedings as aforesaid shall be made and taken as if recognizances had been so entered into.

POWER TO EXPEND MONEY IN INVESTIGATION.

As to investigations.

12. From and after the passing of this Act the council shall have power to expend money in investigating subjects of general importance to the inhabitants

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(*a*) **Byelaws with respect to bridges.** Power to make byelaws for the management and regulation of bridges vested in the Met. Bd. Wks. was conferred on the Board by the Met. Bd. Wks. (Various Powers) Act, 1882 (45 Vict. ch. lvi.), which enacted :—

Sec. 41. "In addition to any byelaws in that behalf which the Board are now authorised to make the Board may from time to time make and when made repeal amend or alter any byelaws relating to the management and regulation of any bridge or bridges within the Metropolis vested in them or which they may be authorised to construct or of any embankment vested in the Board and especially byelaws for all or any of the following purposes :—

"To control and regulate the traffic on or over any such bridge or bridges or such embankments ;

"To limit the weights of loads to be brought on any such bridge or bridges or such embankments ;

"To stop wholly or partially traffic over any such bridge or bridges or any such embankment during alteration or repair ;

"To prohibit the mooring of vessels to any such bridge or embankment or other work connected therewith of the Board ;

"And all the provisions of the Metropolis Management Act 1855 with respect to the making contents confirmation publication and evidence of byelaws and to securing the observance of the same and to penalties and proceedings before justices and the recovery and application of penalties shall extend and apply to any byelaws from time to time made by the Board under this section."

Sec. 48. "In any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act or of any byelaw made in pursuance of this Act it shall be lawful to include in one summons all such penalties and the charge for such summons shall not exceed two shillings."

(*b*) **Bridges vested in Council.** See the Loc. Govt. Act, 1888, sec. 3 (viii), and note thereto, *ante*.

56 & 57 Vict. ch. ccxxi.

of the county as such: provided that this section shall not authorise the council to expend in any one financial year any greater sum than one thousand pounds in relation to subjects with regard to which but for this enactment the council would not have power to expend money.

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RETURNS.

Council may require copies of returns.

14.—(1) The council may from time to time require the guardians of the poor the overseers and any other rating authorities having powers within the county to return for the use of the council such copies of their valuation lists reports and accounts and other information with respect to rating matters as the council may require for purposes of statistical information:

Provided always that as regards the four Inns of Court mentioned in schedule C to the Metropolis Management Act 1855 the provisions of this section shall extend only to information required by the council relating specifically to rating matters.

(2) The council may from time to time with the sanction of the charity commissioners require any vestry to return for the use of the council copies of any returns in their possession as to charity property belonging to their respective parishes and districts.

(3) The council shall if required by any such guardians overseers vestry or other authority repay to them the reasonable cost incurred by them in supplying such copies and giving such information as the council may require under this section.

RE-ARRANGEMENT OF WARDS.

Power to re-arrange wards in parishes.

15. The council may from time to time for the purpose of elections of vestrymen upon the application in writing of the vestry or of not less than five hundred rated householders of a parish mentioned in schedules A and B to the Metropolis Management Act 1855 by order under their seal re-arrange the wards in such parish and determine the number extent limits and boundary lines of the new wards but so nevertheless that no ward shall contain less than five hundred rated householders and *that the whole number of wards shall not exceed eight* (*c*) and the council shall in making any such re-arrangement apportion among the several wards the number of vestrymen to be elected for such parish and shall in assigning the number of vestrymen to each ward have regard so far as practicable as well to the number of persons rated to the relief of the poor in each ward as to the aggregate amount of the sums at which all such persons are rated and the number of vestrymen assigned to each ward shall be a number divisible by three and a copy of the order shall be transmitted to a Secretary of State for his approval and also to the vestry clerk of the parish to which such re-arrangement and apportionment relate and the said order shall within seven days after such transmission be published by the council in the London Gazette and at the expiration of not less than two months the said Secretary of State shall if he approve the same publish the said order again with his approval affixed thereto in the London Gazette but if the said Secretary of State disapprove of the proposed re-arrangement into wards or apportionment of vestrymen then he shall subject however to all the above limitations make such other order as to the re-arrangement or apportionment as in his judgment shall be more conducive to a fair representation in the vestry of the interests of the ratepayers of the parish and shall publish such order in the London Gazette and the parish shall after such publication by him in the London Gazette be deemed to be re-arranged into the new wards.

Any such order may contain such provisions with reference to the election rotation and retirement of vestrymen (whether elected prior or subsequently to the date of the order) as the council may think necessary for the purpose of carrying out the provisions of the order.

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19. [*Compensation to workmen, &c., injured in construction of Blackwall Tunnel.*]

(*c*) **Number of wards.** The above section is to be read and have effect as if the words "and that the whole number of wards shall not exceed eight" were omitted. London County Council (Genl. Powers) Act, 1895 (58 & 59 Vict. ch. cxxvii.), sec. 42. See further as to the division of parishes into wards the Metrop. Man. Act, 1855, sec. 3, and the Metrop. Man. Amend. Act, 1862, sec. 41, *ante*.

ELECTRIC LIGHTING.

56 & 57 Vict. ch. ccxxi.

Powers as to lighting embankment and bridges.

20. The council for the purpose of lighting with electricity the Victoria Embankment and the gardens thereon and the Westminster and Waterloo bridges may erect maintain and use such works buildings and appliances as they may find convenient on or under any part of the land on the said embankment (not being more than seven hundred feet from any part of the Charing Cross railway bridge) which is bounded on the west by the said bridge on the south by the roadway of the Victoria Embankment on the east by Waterloo bridge and on the north by an imaginary line drawn along the centre of the garden from its eastern end near Waterloo bridge to its western end near the Charing Cross railway bridge and they may upon any part of the said embankment gardens and bridges erect place and maintain such posts standards wires and appliances as they may find convenient for that purpose:

Provided that the powers of this section shall not extend to empower the council to place or maintain any appliances (other than posts standards wires and lighting apparatus) upon any gardens on the Victoria Embankment to the south-west of the Charing Cross railway bridge without the consent of the commissioner of woods.

21. [*Telegraph lines not to be injured. Notice, in writing, to be given to Postmaster-General one month before any works commenced.*]

22. [*Electric circuits of Metropolitan District Railway not to be injuriously affected. Notice, in writing, to be given to said railway company at least seven days before commencing to erect electric circuit or provide electric current. Power to said railway company to serve notice in writing on council, if affected, and to execute necessary work if remedy not effected by council with reasonable despatch.*]

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Public buildings of vestries and district boards.

24. Any vestry or district board constituted and acting under the Metropolis Management Act 1855 and the Acts amending the same may erect any hall or other building to be used for the purposes of business or to be used partly for the purposes of business and partly for the purposes of public meetings assemblies entertainments libraries and other like purposes and they may adapt or alter any building now used by them for the purposes of a town hall or offices for use for any of the purposes aforesaid and the expenses so incurred by them shall be deemed to be expenses incurred by them under and for the purposes of the said Acts and may be raised and defrayed accordingly Any expenses incurred for any like purposes within the two years preceding the passing of this Act shall be deemed to be expenses authorised by this section and may be raised and defrayed accordingly.

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LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1894.

[57 & 58 Vict. ch. ccxii.]

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PART III.—EXPLOSIVES AT FERRIES (*d*)—ENFORCEMENT OF BYELAWS (*e*).

Enforcement of byelaws as to explosives at ferries.

5. Any person who shall offend against any byelaw of the council prohibiting or regulating the conveyance by their ferries of explosives or other goods articles

(*d*) **Ferries.** The Met. Bd. Wks. (Various Powers) Act, 1885 (48 & 49 Vict. ch. clxvii.), secs. 14—23, empowered the Board to establish, maintain, work, and regulate a free ferry, and to provide and work ferry boats across the River Thames at Woolwich, and to make byelaws for their regulation. Sec. 57 applies the provisions of the Met. Man. Act, 1855, to such byelaws, but requires them to be confirmed by the Bd. of Trade.

(*e*) **Enforcement of byelaws.** "The Council may from time to time procure any of their officers or servants to be sworn in as constables for the purpose of enforcing byelaws and regulations made by the Council for the management of ferry boats provided by them and for the control and regulation of persons vehicles and animals resorting to such ferry boats and the pontoons piers or landing-places used for the purposes of such ferry boats." London County Council (Genl. Powers) Act, 1892 (55 & 56 Vict. ch. ccxxxviii.), sec. 39.

57 & 58 Vict. ch. ccxii.

matters or things which in the opinion of the council are or may be injurious to or prejudicially affect the use of any vessels used for the purpose of ferries or the traffic to be carried thereon shall be liable to a penalty of not exceeding twenty pounds.

Inspection and search for explosives.

6. The council may in writing authorise any one or more of the principal officers in charge of their ferries or any other person specially appointed by them for the purpose to search any vehicle or packages and to open any packages tendered to them for transmission over any of their ferries or brought upon any piers landing-places or other ferry works of the council and any officer so authorised being in uniform and on producing his authority if required may inspect any such vehicles or packages and open any packages if he has reason to suspect that such packages contain any goods articles matters or things which have been or may be declared by the byelaws of the council to be injurious to or to prejudicially affect the use of any vessels used for the purpose of ferries or the traffic to be carried thereon.

Arrest of transient offenders against byelaws.

7. Any constable or any officer of the council authorised in writing to enforce byelaws of the council relating to ferries and any person called to the assistance of such constable or officer may without other warrant than this Act seize and detain any person committing or having committed any offence against any such byelaw whose name or residence is unknown to and cannot be ascertained by such constable or officer and take him to a police station or before a justice to be dealt with according to law:

Provided that any officer of the council acting under this part of this Act and not being in uniform shall have with him a written authority from the council to act and shall produce the same if required.

PART IV.—PROTECTION OF SEWERS (*f*).

Regulating discharge of solid matter and refuse into sewers.

8. Every person who—

(a) places or throws or causes to be placed or thrown or to fall; or

(b) knowingly permits to be placed or to fall or to be carried; or

(c) causes or knowingly permits to be placed in such a position as to be liable to fall or to be carried

in or into any sewer of the council or in or into any sewer or drain dock or inlet communicating with any sewer of the council or over any grate communicating with any such sewer or drain any solid matter mud or refuse except such as is contained in any ordinary house sewage shall be deemed to have committed an offence against this part of this Act and every person committing such offence shall be liable to a penalty not exceeding twenty pounds and in the case of a continuing offence to a daily penalty of not exceeding five pounds for every day on which the offence continues after conviction:

Any such penalty shall be recoverable only by the council who shall not be bound to proceed to recover any such penalty in any case where in their opinion such matter can be received into the sewers without risk of causing injury

(*f*) **Protection of sewers—Trespassers.** "Any person found within or attempting to enter any sewer of the Council without their permission shall be liable to a penalty of not exceeding forty shillings or in default to imprisonment for not exceeding one month and it shall be lawful for any officer of the Council to eject and remove any such person from any such sewer and in the event of the name and address of such person not being known to detain him and hand him over to any police constable and any such person may be dealt with before any court of summary jurisdiction in accordance with the Summary Jurisdiction Acts." London Council (Genl. Powers) Act, 1890 (53 & 54 Vict. ch. ccxliii.), sec. 39. "Any person found within or attempting to enter any sewer of any vestry or district board of works acting under the Metropolis Management Act, 1855 and the Acts amending the same without their permission shall be liable to a penalty of not exceeding forty shillings and it shall be lawful for any officer of such vestry or district board to eject and remove any such person from any such sewer and in the event of the name and address of such person not being known to detain him and hand him over to any police constable and any such person may be dealt with before any court of summary jurisdiction in accordance with the Summary Jurisdiction Acts as defined by the Summary Jurisdiction Act, 1879." London County Council (Genl. Powers) Act, 1893 (56 & 57 Vict. ch. ccxxi.), sec. 23. For other provisions for the protection of sewers, see the Metrop. Man. Act, 1855, secs. 83, 204, and 205; and the Metrop. Man. Amend. Act, 1862, secs. 68 and 69, *ante*.

thereto or obstruction therein or of prejudicially affecting the health of any person employed in the sewers or otherwise : 57 & 58 Vict. ch. ccxii.

Provided that this section shall not authorise the recovery of a penalty from the commissioners of sewers of the City of London or from a vestry or district board of works for flushing or washing the surface of a street or place under their control or for removing mud or proper sewage deposit by flushing with water from any sewer under their control if such street or place or the streets and places draining into such sewer or gullies communicating therewith shall in each case have been previously properly swept and cleansed and solid matter mud and refuse removed therefrom so far as reasonably practicable.

Regulating discharge of offensive liquid refuse.

9. Every person who causes to fall flow or enter or permits to fall flow or enter or to be carried into any sewer of the council or any sewer or drain communicating therewith any matter such as hereafter defined shall be deemed to have committed an offence against this part of this Act and shall be liable to a penalty of not exceeding twenty pounds and to a further penalty of not exceeding five pounds for every day on which the default continues after conviction.

The matters hereinbefore referred to are—

(a) Any chemical or manufacturing or trade or other refuse (not being solid matter or refuse to which the preceding section applies) ;

(b) Any waste steam condensing water heated water or other liquid (such water or other liquid being of a higher temperature than 110 degrees Fahrenheit) ;

which either alone or in combination with other matter or liquid in a sewer may cause a nuisance or involve danger or risk of injury to the health of persons entering the sewers or be injurious to the structure or materials of the sewers or works of the council.

Any penalty under this section shall be recoverable only by the council and no proceeding under this section to recover any such penalty shall be commenced except in pursuance of a recommendation from the committee of the council charged with the management of the sewers after a report from the medical officer chemist or engineer of the council describing the matter alleged to be causing a nuisance or to be dangerous or injurious and the nature of the nuisance danger or injury alleged to be caused thereby.

Special orders in certain cases.

10. Where in the opinion of the council the introduction of any such matter as aforesaid into a sewer whether directly or through any drain or channel communicating therewith either does or will involve any such danger injury or risk as aforesaid the council may by order absolutely prohibit any such matters or matter being caused or permitted to fall flow or enter or to be carried into any sewer either directly or indirectly.

The council may at any time cause a copy of any such order to be served upon any person who may in their opinion be acting in contravention thereof and if any such person dispute the reasonableness of any such order as applicable to himself or any works or premises under his control such person may appeal to the Local Government Board to appoint a referee to determine the reasonableness thereof and any such referee may determine either that the said order ought not to be enforced as against the objector or that it ought to be enforced either with or without modifications or conditions and may by his award determine that the person objecting should have reasonable time allowed to execute any works or any alterations on his premises which may be necessary in order to prevent the introduction of the matter into a sewer and the costs of the award and determination and the costs of the parties thereto shall be in the discretion of the referee.

Any person who shall fail to comply with the terms of any such order after service thereof upon him or in the event of an appeal to a referee with the determination of the referee shall be liable to a penalty of not exceeding twenty pounds for every such default and to a daily penalty not exceeding five pounds for every day on which the default continues after conviction thereof.

Powers of entry and inspection

11. The council by any of their officers either generally or specially authorised in that behalf in writing may at any reasonable time enter any premises except premises of the Metropolitan or Metropolitan District Railway Companies which shall be subject to the provision hereafter contained for the purpose of examining whether the provisions of this part of this Act are being contravened.

Any person who shall refuse to permit any such officer after production of his authority to enter into any premises or shall obstruct any such officer in carrying

57 & 58 Vict. ch. ccxii.

out his duties under this section shall be liable to a penalty of not exceeding twenty pounds.

Operation of certain sections postponed.

12. The provisions of the three preceding sections of this Act ("Regulating discharge of offensive liquid refuse" "Special orders in certain cases" and "Powers of entry and inspection") shall not come into force until the expiration of twelve months from the passing of this Act.

For protection of the Metropolitan and Metropolitan District Railway Companies.

13. The provisions of this part of this Act shall not apply to heated water discharged from railway engines on any part of the railways of or worked over by the Metropolitan or Metropolitan District Railway Companies or either of them in any case where reasonable provision has been or shall be made to the satisfaction of the Board of Trade either within or in connexion with a sewer of the council or a sewer or drain communicating therewith to secure that the temperature of such heated water shall not exceed 110 degrees Fahrenheit at such distance from the point of discharge into any sewer as in the event of difference between the council and the company may be considered reasonable by the Board of Trade Provided that such distance shall not in any case exceed fifty feet from any point at which the water is discharged into any such sewer.

The council shall afford all needful facilities for the works to be executed or appliances to be provided for the purposes of this section in any sewer of the council and such works shall be constructed and maintained by the council to the reasonable satisfaction of the engineer of the company concerned and the expenditure reasonably incurred thereon as the same shall be ascertained in case of difference by an arbitrator to be appointed on the request of either or any of the parties by the Board of Trade shall be paid from time to time by the company to the council on demand.

The Metropolitan and Metropolitan District Railway Companies shall after the expiration of twelve months from the passing of this Act afford reasonable facilities to any officer of the council duly authorised in writing at convenient times having regard to the safety of the public and the exigencies of the traffic to inspect the engine-pits on the companies premises and the connexions on such premises with sewers and drains for the purpose only of ascertaining whether such of the provisions of this part of this Act as are applicable to those companies are being complied with but such officer shall not be entitled to require any interruption or obstruction of the working of the traffic on the said railways or to go on any part of the railway until after twenty-four hours' notice in writing.

For protection of common brewers.

14. This part of this Act shall not extend to prohibit the introduction into a sewer of water or liquid used for washing casks or other vessels at any brewery provided such water or liquid be not of a higher temperature than 110 degrees Fahrenheit and do not contain any greater proportion than three per cent. of solid refuse.

As to placing snow in sewers.

15. This part of this Act shall not prevent any vestry or district board of works from placing snow in any sewer belonging to them provided arrangements be made to prevent obstruction of any sewer and to prevent any solid matter from passing or being conveyed into any sewer of the council.

Cleansing of gratings and gullies transferred to vestries and district boards.

16. The duty of cleansing every grating and gully in any street communicating with any sewer of the council (except in streets vested in and cleansed by the council) so far as such grating or gully belongs to or is under the control of the council shall as from the passing of this Act be transferred to the vestry of the parish or the board of works for the district within which the same is situate.

Act not to affect powers of proceeding under other Acts.

17. Nothing in this Act shall be deemed to take away or affect any power of any vestry or district board of works to take proceedings under any other Act in respect of any of the matters made offences under this part of this Act.

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18. [*Power to contribute towards purchase of land adjoining Paddington Recreation Ground.*]

PART VI.—PENALTIES—COSTS.

Penalties.

19. Penalties under this Act may be recovered in a summary way in a petty sessional court.

20. [*Costs of executing Act to be defrayed as payments for general county purposes.*]

LONDON COUNTY COUNCIL (GENERAL POWERS) ACT, 1895.

[58 & 59 Vict. ch. cxxvii.]

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Compensation to Workmen.

Compensation.

44. The council shall have power in their discretion to pay compensation to any workman or person employed by them who has been or may be injured in course of his work or employment and to the widow and children or any of them of any such workman or person who while so working or employed shall die or sustain injury resulting in death. Such compensation as aforesaid may be paid either in one sum or by periodical payments at such times and extending over such period as the council may think fit and the council may if they think fit contract either prospectively or retrospectively, and for such consideration to be paid by the council as they may think proper with any insurance office society or company for the payment by such office society or company of any such compensation as aforesaid. The expenses of the council under this section shall be considered as expenses incurred by them for general county purposes and shall be defrayed accordingly. Nothing in this Act and no compensation whi ch may be paid or become payable thereunder shall take away or prejudicially affect any right or claim to damages or compensation which any such workman or person as aforesaid or his widow or children may have against any person or body other than the council or (except so far as may be agreed when such compensation is granted) against the council.

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LOCAL GOVERNMENT ACT, 1894.

56 & 57 Vict. c. 73. An Act to make further provision for Local Government in England and Wales. [5th March, **1894**

PART I.

* * * * * * *

Powers and Duties of Parish Councils (a).

Parish council to appoint overseers.

5.—(1) The power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer (*b*), for every rural parish having a parish council, shall be transferred to and vested in the parish council, and that council shall in each year, at their annual meeting, appoint the overseers of the parish, and shall as soon as may be fill any casual vacancy occurring in the office of overseer of the parish, and shall in either case forthwith give written notice thereof in the prescribed form to the board of guardians (*c*).

(2) As from the appointed day—

(a) the churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens, and

(b) references in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, and

(c) the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.

Transfer of certain powers of vestry and other authorities to parish council.

6.—(1) Upon the parish council of a rural parish coming into office, there shall be transferred to that council :—

(a) The powers, duties, and liabilities of the vestry of the parish except—

(i) so far as relates to the affairs of the church or to ecclesiastical charities; and

(ii) any power, duty, or liability transferred by this Act from the vestry to any other authority:

(b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities; or are powers and duties of overseers, but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855: provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate.

18 & 19 Vict. c. 128.

(c) The powers, duties, and liabilities of the overseers or of the churchwardens and overseers of the parish with respect to—

(i) appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate (*d*); and

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(*a*) **Powers and duties of parish council.** The Local Govt. Bd., on the application of any London sanitary authority, may make an order conferring on that sanitary authority any powers, duties, or liabilities of a parish council. See sec. 33, sub-secs. (1) and (6), *post*.

(*b*) **Appointment of overseers.** See sec. 33 (1), and note thereto, *post*.

(*c*) **Notice to guardians.** As to the appointment of overseers by the guardians in default of such notice, see sec. 50, *post*.

(*d*) **Valuation list; county rate.** See *post*, vol. ii. tit. "*Rating*."

(ii) the provision of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape, or matters relating thereto; and 56 & 57 Vict. c. 73.

(iii) the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them;

(d) The powers exerciseable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property.

(2) A parish council shall have the same power of making any complaint or representation as to unhealthy dwellings or obstructive buildings as is conferred on inhabitant householders by the Housing of the Working Classes Act, 1890 (*e*), but without prejudice to the powers of such householders. 53 & 54 Vict. c. 70.

(3) A parish council shall have the same power of making a representation with respect to allotments, and of applying for the election of allotment managers, as is conferred on parliamentary electors by the Allotments Act, 1887, or the Allotments Act, 1890 (*f*), but without prejudice to the powers of those electors. 50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

(4) Where any Act constitutes any persons wardens for allotments, or authorises or requires the appointment or election of any wardens, committee, or managers for the purpose of allotments, then, after a parish council for the parish interested in such allotments comes into office, the powers and duties of the wardens, committee, or managers shall be exercised and performed by the parish council, and it shall not be necessary to make the said appointment or to hold the said election, and for the purpose of section sixteen of the Small Holdings Act, 1892 (*g*), two members of the parish council shall be substituted for allotment managers or persons appointed as allotment managers. 55 & 56 Vict. c. 31.

(*e*) **Housing of the Working Classes Act, 1890.** See this Act, *post*, vol. ii. tit. "*Housing of the Working Classes.*"

(*f*) **Allotments Acts.** The Allotments Act, 1887 (50 & 51 Vict. c. 48), requires any urban or rural sanitary authority within the meaning of the Public Health Act, 1875, to take into consideration the representation of any six registered parliamentary electors or ratepayers resident in the district, and, if satisfied that there is a demand for allotments for the labouring population, to acquire land for the purpose; and empowers them to appoint managers for the management of such allotments. The Woolwich Local Board is the only London sanitary authority to which the Act applies. *Ib.* sec. 17; Public Health Act, 1875 (38 & 39 Vict. c. 55), sec. 5; Public Health (London) Act, 1891, sec. 102, *ante*, vol. i. The Allotments Act, 1890, sec. 2, provides that in default of the sanitary authority an appeal may be made to the county council, who may themselves execute all the powers and duties of the sanitary authority. Sec. 3 requires every county council, at the annual meeting for the election of chairman, to elect a committee not exceeding one-fourth of the whole body for the purposes of the Allotments Acts. The county council's expenses are defrayed as a general county purpose. *Ib.* sec. 6 (1).

(*g*) **Small Holdings Act, 1892.** This Act empowers the council of any county to purchase or hire land, and to sell or let the same for the purpose of small holdings, exceeding one acre but not exceeding fifty acres, or if exceeding fifty acres, of an annual value for the purposes of the income tax not exceeding fifty pounds. *Ib.* secs. 1—4. Every council of a county is required to appoint a committee to consider whether circumstances justify the provision of small holdings; and on a petition of one or more county electors, the committee is required to make an inquiry and report to the council. If any councillor representing or alderman residing in any electoral division of the county in which it is alleged that there is a demand for small holdings is not a member of the committee, he shall be added to the committee for the consideration of the alleged demand. *Ib.* sec. 5. Every county council acquiring land under the Act is required to make rules as to the mode and conditions of sale and letting, and to keep a list of the owners and occupiers of the small holdings let by them. *Ib.* secs. 7 and 8. Where a county council provide small holdings, they may delegate their powers with respect to the sale, letting, and management of such holdings to a committee consisting of the county councillors representing the electoral division in which the holdings are situate. *Ib.* sec. 16. Where the tenant of a small holding has agreed with his landlord for the purchase of his holding, the county council may advance to the tenant, on the security of the holding, an amount not exceeding four-fifths of the purchase money. *Ib.* sec. 17.

56 & 57 Vict. c. 73.

Transfer of powers under adoptive Acts.

3 & 4 Will. 4, c. 90.
9 & 10 Vict. c. 74.
45 & 46 Vict. c. 30.
15 & 16 Vict. c. 85.
48 & 49 Vict. c. 21.
23 & 24 Vict. c. 30.
55 & 56 Vict. c. 53.

7.—(1) As from the appointed day, in every rural parish the parish meeting shall, exclusively, have the power of adopting any of the following Acts, inclusive of any Acts amending the same (all which Acts are in this Act referred to as "the adoptive Acts"); namely (*h*)—

(a) The Lighting and Watching Act, 1833;
(b) The Baths and Washhouses Acts, 1846 to 1882;
(c) The Burial Acts, 1852 to 1885;
(d) The Public Improvements Act, 1860;
(e) The Public Libraries Act, 1892.

(2) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression "vestry" shall include any meeting of ratepayers or voters.

(4) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

(5) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(6) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

(7) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

8. [*Additional powers of parish council* (*i*).]

9. [*Application of Lands Clauses Acts for purpose of acquisition of land by parish council by agreement. If parish council unable to acquire suitable land by agreement, county council may make inquiry, and, if they think proper, may make an order putting into force Lands Clauses Acts with respect to acquiring land otherwise than by agreement. If county council refuse, Local Govt. Bd., after local inquiry, may make order. Provisions regulating such inquiries and orders* (*k*).]

10. [*Power to parish council to hire land for allotments.*]

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(*h*) **Adoptive Acts.** These Acts only apply to parishes and places in which they have been adopted in accordance with the regulations therein contained. See the Metrop. Man. Act, 1855, secs. 158 and 165, and notes thereto, *ante*, as to the Lighting and Watching Act, 1833. That Act and the Public Improvements Act, 1860, are of no practical application in London, having regard to the ample powers with respect to lighting, paving, and improvements vested in the vestries and district boards under the Metropolis Management Acts and the other Acts set out in this work.

As to the other adoptive Acts, see *post*, vol. ii. tit. "*Baths and Washhouses*," "*Burials*," and "*Public Libraries*," respectively. During the year 1895 the Local Govt. Bd. made orders transferring powers and duties under these Acts to the following vestries:—St. Mary, Battersea; St. Matthew, Bethnal Green; St. John, Hampstead; St. Mary, Islington; St. Pancras; and St. James, Westminster.

(*i*) **Additional powers.** Powers corresponding with those conferred by this section are already vested in the vestries and district boards under the Metropolis Management Acts and other Acts set out in this work.

(*k*) **Acquisition of land.** As to the powers of the London sanitary authorities to acquire land, see the Metrop. Man. Act, 1855, secs. 151 and 152; the Public Health (London) Act, 1891, sec. 99 (5), and the Metropolitan Paving Act, 1817, secs. 80—82, *ante*.

PART II.—GUARDIANS AND DISTRICT COUNCILS.

56 & 57 Vict. c. 73.

Part II. Election and qualification of guardians.

20. As from the appointed day the following provisions shall apply to boards of guardians (*l*):—

(1) There shall be no ex-officio or nominated guardians:

(2) A person shall not be qualified to be elected or to be a guardian for a poor law union unless he is a parochial elector of some parish within the union, or has during the whole of the twelve months preceding the election resided in the union, or in the case of a guardian for a parish wholly or partly situate within the area of a borough, whether a county borough or not, is qualified to be elected a councillor for that borough, and no person shall be disqualified by sex or marriage for being elected or being a guardian. So much of any enactment, whether in a public general or local and personal Act, as relates to the qualification of a guardian shall be repealed:

(3) The parochial electors of a parish shall be the electors of the guardians for the parish, and, if the parish is divided into wards for the election of guardians, the electors of the guardians for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward:

(4) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected:

(5) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board:

(6) The term of office of a guardian shall be three years, and one-third, as nearly as may be, of every board of guardians shall go out of office on the fifteenth day of April in each year, and their places shall be filled by the newly elected guardians. Provided as follows:—

(a) Where the county council on the application of the board of guardians of any union in their county consider that it would be expedient to provide for the simultaneous retirement of the whole of the board of guardians for the union, they may direct that the members of the board of guardians for that union shall retire together on the fifteenth day of April in every third year (*m*), and such order shall have full effect, and where a union is in more than one county, an order may be made by a joint committee of the councils of those counties;

(b) Where at the passing of this Act the whole of the guardians of any union, in pursuance of an order of the Local Government Board, retire together at the end of every third year, they shall continue so to retire, unless the county council, or a joint committee of the county councils, on the application of the board of guardians or of any district council of a district wholly or partially within the union, otherwise direct:

(7) A board of guardians may elect a chairman or vice-chairman or both, and not more than two other persons, from outside their own body, but from persons qualified to be guardians of the union, and any person so elected shall be an additional guardian and member of the board. Provided that on the first election, if a sufficient number of persons who have been ex-officio or nominated guardians of the union, and have actually served as such, are willing to serve, the additional members shall be elected from among those persons.

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22. The chairman of a district council unless a woman or personally disqualified by any Act shall be by virtue of his office justice of the peace for the county in which the district is situate (*n*), but before acting as such justice he

Chairman of council to be justice.

(*l*) **Guardians.** The provisions of this part of the Act respecting guardians are applied to London by sec. 30, *post*.

(*m*) **Simultaneous retirement of guardians.** All the boards of guardians in the administrative county of London retire together on April 15th in every third year. London Coun. Counc. Annual Report for the year ending March 31st, 1896, p. 59. The first retirement takes place in the year 1898, sec. 79 (5), *post*.

(*n*) **Chairman to be justice.** This provision is applied to the chairmen of the London vestries (except those electing district boards) and to the chairmen of district boards by sec. 31 (2), *post*.

56 & 57 Vict. c. 73.

shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace (*o*) other than the oath respecting the qualification by estate.

Constitution of district councils in urban districts not being boroughs.

23. As from the appointed day, where an urban district is not a borough (*p*)—

(1) * * * * * * *

(2) A person shall not be qualified to be elected or to be a councillor (*q*) unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage (*r*) for being elected or being a councillor. So much of any enactment whether in a public general or local and personal Act as relates to the qualification of a member of an urban sanitary authority shall be repealed:

(3) The parochial electors (*s*) of the parishes in the district shall be the electors of the councillors of the district, and, if the district is divided into wards, the electors of the councillors for each ward shall be such of the parochial electors as are registered in respect of qualifications within the ward:

(4) Each elector may give one vote and no more for each of any number of persons not exceeding the number to be elected:

(5) The election shall, subject to the provisions of this Act, be conducted according to rules framed under this Act by the Local Government Board (*t*).

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Guardians in London.

30. The provisions of this part of this Act respecting guardians shall apply to the administrative county of London (*u*) . . .

Provisions as to London vestries and district boards.

48 Vict. c. 10.

31.—(1) The provisions of this Act with respect to the qualification of the electors of urban district councillors (*x*), and of the persons to be elected (*y*), and with respect to the mode of conducting the election (*z*), shall apply as if members of the local board of Woolwich (*a*), and the vestries elected under the Metropolis Management Acts, 1855 to 1890 (*b*), or any Act amending those Acts, and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts, were urban district councillors, and no person shall, ex-officio, be chairman of any of the said vestries. Provided that the Elections (Hours of Poll) Act, 1885 (*c*), shall apply to elections to the said vestries.

(2) Each of the said vestries, except those electing district boards, and each of the said district boards and the local board of Woolwich, shall at their first meeting after the annual election of members elect a chairman for the year, and section forty-one of the Metropolis Management Act, 1855 (*b*), shall apply only in case of the absence of such chairman, and the provisions of

18 & 19 Vict. c. 120.

(*o*) **Oaths required by law.** See note to sec. 2 (5) (b) of the Loc. Govt. Act, 1888, *ante*, p. 2.

(*p*) **Application to London.** For the application of the provisions of sec. 23 to London, see sec. 31 (1).

(*q*) **Disqualifications.** For the disqualifications for being elected or being a councillor, see sec. 46 (1), *post*.

(*r*) **Married women.** See note to sec. 43, *post*.

(*s*) **Parochial electors.** See secs. 44 (1) and 75 (2), *post*, for the meaning of this expression.

(*t*) **Rules.** See sec. 48, *post*, and the Vestrymen and Auditors (London) Election Order, 1897, *post*.

(*u*) **Guardians.** See sec. 20, *ante*.

(*x*) **Qualification of electors.** See sec. 23 (3), *ante*, and sec. 75 (2), *post*.

(*y*) **Qualification of persons to be elected.** For the qualifications see sec. 23 (2), *ante*, and for the disqualifications see sec. 46, *post*.

(*z*) **Mode of election.** See sec. 23 (4) and (5), *ante*, sec. 48, *post*, and the Vestrymen and Auditors (London) Election Order, 1897, *post*.

(*a*) **Woolwich.** As to the Woolwich Local Board, see note to sec. 238 of the Met. Man. Act, 1855, *ante*, p. 206.

(*b*) **Metrop. Man. Acts, 1855 to 1890.** *Ante*, pp. 123—277.

(*c*) **The Elections (Hours of Poll) Act, 1885,** enacts that the poll shall be kept open from 8 a.m. to 8 p.m.

this Act with respect to chairmen of urban district councils being justices (*d*) shall apply as if the said vestries and boards were urban district councils. 56 & 57 Vict. c. 73.

(3) Nothing in any local and personal Act shall prevent any vestry in the county of London from holding their meeting at such time as may be directed by the vestry.

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33.—(1) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers (*e*), any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council (*f*), and applying with the necessary modifications the provisions of this Act with reference thereto. Power to apply certain provisions of Act to urban districts and London.

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(3) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect.

(4) The order shall not alter the incidence of any rate, and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers.

(5) An order under this section may also be made on the application of any representative body within a borough or district.

(6) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district (*g*).

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35. Save as specially provided by this Act, this part of this Act shall not apply to the administrative county of London . . . Restrictions on application of Act to London

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41. The time for petitioning against an order under section fifty-seven of the Local Government Act, 1888 (*h*), shall be six weeks instead of three months after the notice referred to in sub-section three of that section. Reduction of time for appealing against county council orders.

42. When an order under section fifty-seven of the Local Government Act, 1888 (*h*), has been confirmed by the Local Government Board, such order shall at the expiration of six months from that confirmation be presumed to have been duly made, and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever. Validity of county council orders.

PART IV.—SUPPLEMENTAL.

Elections.

43. For the purposes of this Act a woman shall not be disqualified by marriage (*i*) for being on any local government register of electors, or for being Removal of disqualification of married women.

(*d*) **Chairmen being justices.** See sec. 22, *ante*.

(*e*) **Appointment of overseers and assistant overseers.** Some of the London vestries already possessed the power of appointing overseers, and of appointing and revoking the appointment of assistant overseers. Numerous orders under this Act have been made by the Local Govt. Bd., conferring such powers on London vestries which did not possess them. See Statutory Rules and Orders, 1895, p. 785.

(*f*) **Powers, &c., of parish council.** See sec. 5, *et seq.*, *ante*.

(*g*) **London sanitary authorities.** As to these authorities and their districts, see the Public Health (London) Act, 1891, sec. 99, *ante*.

(*h*) **Local Govt. Act, 1888, sec. 57.** *Ante*, p. 36.

(*i*) **Married women.** The disqualification of married women is only removed for the purposes of this Act. Therefore, though qualified to vote in the election of vestrymen and auditors, they are still disqualified to vote in the election of county councillors. See *Reg.* v. *Harrald*, *ante*, p. 76. A woman, whether married or single, is not qualified by reason of her ownership of property to be a parochial elector. *Drax* v. *Efooks* (1896), 1 Q. B. 238 ; 65 L. J. Q. B. 270.

56 & 57 Vict. c. 73.

an elector of any local authority, provided that a husband and wife shall not both be qualified in respect of the same property.

Register of parochial electors.

44.—(1) The local government register of electors and the parliamentary register of electors (*k*), so far as they relate to a parish shall, together, form the register of the parochial electors of the parish; and any person whose name is not in that register shall not be entitled to attend a meeting or vote as a parochial elector, and any person whose name is in that register shall be entitled to attend a meeting and vote as a parochial elector unless prohibited from voting by this or any other Act of Parliament.

(2) Where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register of electors for the parish within the meaning of this section.

(3) The lists and register of electors in any parish shall be framed in parts for wards of urban districts and parishes in such manner that they may be conveniently used as lists for polling at elections for any such wards.

(4) Nothing in any Act shall prevent a person, if duly qualified, from being registered in more than one register of parochial electors.

(5) Where in that portion of the parliamentary register of electors which relates to a parish a person is entered to vote in a polling district other than the district comprising the parish, such person shall be entitled to vote as a parochial elector for that parish, and in addition to an asterisk there shall be placed against his name a number consecutive with the other numbers in the list.

(6) Where the revising barrister in any list of voters for a parish would—

51 Vict. c. 10.

(a) In pursuance of section seven of the County Electors Act, 1888, place an asterisk or other mark against the name of any person (*l*); or

(b) In pursuance of section four of the Registration Act 1885 (*m*), erase the name of any person otherwise than by reason of that name appearing more than once in the lists for the same parish; or

41 & 42 Vict. c. 26. 48 & 49 Vict. c. 15.

(c) in pursuance of section twenty-eight of the Parliamentary and Municipal Registration Act, 1878, as amended by section five of the Registration Act, 1885, place against the name of a person a note to the effect that such person is not entitled to vote in respect of the qualification contained in the list (*n*),

the revising barrister shall, instead of placing that mark or note, or erasing the name, place against the name, if the person is entitled to vote in respect of that entry as a county elector or burgess, a mark signifying that his name should be printed in division three of the list, or if he is entitled to vote only as a parochial elector, a mark signifying that he is entitled to be registered as a parochial elector, and the name so marked shall not be printed in the parliamentary register of electors, but shall be printed, as the case requires, either in division three of the local government register of electors, or in a separate list of parochial electors.

(7) Where the name of a person is entered both in the ownership list and in the occupation list of voters in the same parish, and the revising barrister places against that name a mark or note signifying that the name should be printed in division three of the lists, an asterisk or other mark shall be there printed against the name, and such person shall not be entitled to vote as a parochial elector in respect of that entry.

(8) Such separate list shall form part of the register of parochial electors of the parish, and shall be printed at the end of the other lists of electors for the parish,

(*k*) **Register of electors.** The expression "local government register of electors" means the county register; and the expression "parliamentary register of electors" means a register of persons entitled to vote at any parliamentary election. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 17.

(*l*) **County Electors Act, 1888.** *Post*, vol. ii. tit. "*County Electors.*"

(*m*) **Registration Act, 1885, sec. 4.** See note to sec. 7 (5) of the County Electors Act, 1888, *post*, vol. ii.

(*n*) **Parly. and Mun. Reg. Act, 1878.** Sec. 28 requires the revising barrister, where a person is entered more than once as a parliamentary voter for the same parliamentary borough, to retain one entry for voting, and to place against the others a note to the effect that such person is not entitled to vote in respect of the qualification therein contained. The Registration Act, 1885, sec. 5, provides rules for the determination of the entry to be retained where such person makes no selection.

and the names shall be numbered consecutively with the other names on those lists, and the law relating to the register of electors shall, with the necessary modifications, apply accordingly, and the lists shall, for the purposes of this Act, be deemed to be part of such register. 56 & 57 Vict. c. 73.

(9) Any person may claim for the purpose of having his name entered in the parochial electors list, and the law relating to claims to be entered in lists of voters shall apply.

(10) The clerk of the county council or town clerk, as the case may be, shall, in printing the lists returned to him by the revising barrister, do everything that is necessary for carrying into effect the provisions of this section with respect to the persons whose names are marked by the revising barrister in pursuance of this section.

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46.—(1) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if he— Disqualifications for parish or district council.

(a) is an infant or an alien (*o*); or

(b) has within twelve months before his election, or since his election, received union or parochial relief (*p*); or

(c) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt, or made a composition or arrangement with his creditors (*q*); or

(d) holds any paid office under the parish council or district council or board of guardians, as the case may be (*r*); or

(e) is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board (*s*).

(2) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

(a) in the sale or lease (*t*) of any lands or in any loan of money to the council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood; or

(b) in any newspaper in which any advertisement relating to the affairs of the council or board is inserted; or

(c) in any contract with the council or board as a shareholder in any joint stock company; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

(3) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

(4) Where a person is disqualified by being adjudged bankrupt or making a

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(*o*) **Infant; alien.** See notes (*f*) and (*p*) to sec. 9 of the Mun. Corp. Act, 1882 *ante*, pp. 76 and 78 respectively.

(*p*) **Parochial relief.** See note (*q*) to sec. 9 of the Mun. Corp. Act, 1882, *ante*, p. 78.

(*q*) **Bankrupt; composition with creditors.** See notes (*m*) and (*n*) to sec. 39 of the Mun. Corp. Act, 1882, *ante*, p. 91.

(*r*) **Paid office.** Payment made to a medical practitioner in pursuance of the Public Health (London) Act, 1891, with respect to the notification of infectious disease does not disqualify him from serving as a member of a sanitary authority, or any other public body. *Ib.* sec. 57, *ante*, p. 317.

(*s*) **Concerned in bargain or contract.** See note (*h*) to sec. 12 of the Mun. Corp. Act, 1882, *ante*, p. 80.

(*t*) **Lease.** See *Nell* v. *Longbottom*, *ante*, p. 81.

56 & 57 Vict. c. 73.

composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full (*u*).

(5) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

(6) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months (*x*) consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant (*y*).

(7) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant (*z*).

(8) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

(9) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council.

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Supplemental provisions as to elections, polls, and tenure of office.

48.—(1) . . .

(2) Rules framed under this Act by the Local Government Board in relation to elections shall, notwithstanding anything in any other Act, have effect as if enacted in this Act (*a*), and shall provide, amongst other things—

(i) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;

(ii) for preventing an elector at an election for a union or for a district not a borough from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

(iii) for preventing an elector at an election for a parish divided into parish wards from subscribing a nomination paper or voting for more than one ward;

(iv) *for fixing or enabling the county council to fix the day of the poll* (*b*) *and the hours during which the poll is to be kept open, so, however, that the poll shall always be open between the hours of six and eight in the evening* (*c*);

(v) for the polls at elections held at the same date and in the same area being taken together, except where this is impracticable;

(vi) for the appointment of returning officers for the elections.

(3) At every election regulated by rules framed under this Act, the poll shall

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(*u*) **Bankrupt; composition with creditors.** See note (*q*) on page 537.

(*x*) **Six months**, i.e., calendar months. Interpretation Act, 1889 (52 & 53 Vict. c. 63), sec. 3.

(*y*) **Absence.** Under a similar provision of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), sched. 2, part i., r. 14, it was held that a school board was not entitled to proceed to the election of a new member in the place of a member who had absented himself on account of ill-health, without first giving him an opportunity of explaining his absence; and an injunction was granted to restrain the election of another member. *Richardson* v. *Methley School Bd.* (1893), 3 Ch. 510; 62 L. J. Ch. 943.

(*z*) **Become vacant.** See note (*q*) to sec. 39 of the Mun. Corp. Act, 1882, *ante*, p. 91.

(*a*) **Rules.** See the Vestrymen and Auditors (London) Election Order, 1897, *post*.

(*b*) **Day of poll.** The Metrop. Man. Act, 1855, sec. 7, *ante*, p. 125, provides that the election of London vestrymen shall take place annually in the month of May in every year as the vestry appoint. See also the Vestrymen and Auditors (London) Election Order, 1897, r. 32 (2), *post*.

(*c*) **Hours of poll.** For the election of vestrymen and auditors in London, the poll is kept open from 8 a.m. to 8 p.m. Sec. 31 (1), *ante*.

be taken by ballot, and the Ballot Act, 1872 (*d*), and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*e*), and sections seventy-four and seventy-five and part iv. of the Municipal Corporations Act, 1882 (*f*), as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that— 56 & 57 Vict. c. 73. 35 & 36 Vict. c. 33. 47 & 48 Vict. c. 70. 45 & 46 Vict. c. 50.

(a) section six of the Ballot Act, 1872 (*d*), shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

(b) section thirty-seven of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (*e*), shall apply as if the election were an election mentioned in the first schedule to that Act.

(4) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act (*f*), shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of guardians and of district councillors of a county district not a borough, and of members of the local board of Woolwich (*g*), and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided that—

(a) the provisions as to resignation shall not apply to guardians . . .

(b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election; and

(c) the rules may provide for the incidence of the charge for the expenses of the elections of guardians being the same as heretofore.

(5) If any difficulty arises as respects the election of any individual councillor or guardian, or member of any such local board or vestry as aforesaid, or auditor, and there is no provision for holding another election, the county council may order a new election to be held and give such directions as may be necessary for the purpose of holding the election.

(6) Any ballot boxes, fittings, and compartments provided by or belonging to any public authority, for any election (whether parliamentary, county council, municipal, school board, or other), shall, on request, and if not required for immediate use by the said authority, be lent to the returning officer for an election under this Act, upon such conditions and either free of charge or, except in the prescribed cases, for such reasonable charge as may be prescribed.

(7) The expenses of any election under this Act shall not exceed the scale fixed by the county council, and if at the beginning of one month before the first election under this Act a county council have not framed any such scale for

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(*d*) **Ballot Act, 1872.** For the provisions of this Act, as adapted and altered in their application to the election of vestrymen and auditors, see the Vestrymen and Auditors (London) Election Order, 1897, r. 23, and sched. 3, *post*.

(*e*) **Mun. Electns. (Corr. & Ill. Prac.) Act, 1894.** *Post*. As to the adaptation of the Act to the election of vestrymen and auditors, see the Vestrymen and Auditors (London) Election Order, 1897, r. 25, *post*. The effect of sub-sec. (3) (b), *supra*, is that candidates for the office of vestrymen or auditor are exempt from the provisions of that Act as to maximum expenses, the time for sending in and paying claims, and the return and declaration respecting election expenses.

(*f*) **Mun. Corp. Act, 1882.** For the provisions of secs. 74 and 75, see the Vestrymen and Auditors (London) Election Order, 1897, r. 24 (1) and sched. 4, *post*. As to the adaptation of part iv. (which relates to corrupt practices and election petitions), see *ib.* r. 24 (2). As to the expenses of elections, see *ib.* r. 26. As to the acceptance of office, resignation, and re-eligibility of office holders, see *ib.* sched. 5. As to the filling of casual vacancies, see *ib.* r. 22, and sched. 5, *post*. And for the adapted provisions of sec. 56, see *ib.* r. 9, *post*.

(*g*) **Woolwich.** See the Vestrymen and Auditors (London) Election Order, 1897, r. 28, *post*.

56 & 57 Vict. c. 73.

their county, the Local Government Board may frame a scale for the county, and the scale so framed shall apply to the first election, and shall have effect as if it had been made by the county council, but shall not be alterable until after the first election.

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Supplemental provisions as to overseers.

50. If, in the case of a rural parish or of any urban parish in respect to which the power of appointing overseers has been transferred under this Act, notice in the prescribed form of the appointment of overseers (*h*) is not received by the guardians of the poor law union comprising the parish within three weeks after the fifteenth day of April, or after the occurrence of a vacancy in the office of overseer, as the case may be, the guardians shall make the appointment or fill the vacancy, and any overseer appointed by the guardians shall supersede any overseer previously appointed whose appointment has not been notified. Any such notice shall be admissible as evidence that the appointment has been duly made.

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Miscellaneous.

Supplemental provisions as to guardians.

60.—(1) The council of each county may, from time to time, by order, fix or alter the number of guardians (*i*) or rural district councillors to be elected for each parish within their county, and for those purposes may exercise powers of adding parishes to each other (*k*) and dividing parishes into wards (*l*), similar to those which by the Acts relating to the relief of the poor are, for the purpose of the election of guardians, vested in the Local Government Board.

(2) The council of each county may for the purpose of regulating the retirement of guardians or rural district councillors, in cases where they retire by thirds, and in order that as nearly as may be one-third of the persons elected as guardians for the union, and one-third of the persons elected as rural district councillors for the district, shall retire in each year, direct in which year or years of each triennial period the guardians or district councillors for each parish, ward, or other area in the union or rural district shall retire (*m*).

(3) Where a poor law union is situate in more than one county (*n*), the power under this section of fixing or altering the number of guardians or rural district councillors, and of regulating the retirement of guardians and of district councillors, shall be exercised by a joint committee of the councils of the counties concerned, but if any of those councils do not, within two months after request from any other of them, appoint members of such joint committee, the members of the committee actually appointed shall act as the joint committee.

(*h*) **Appointment of overseers.** See sec. 5 and sec. 33, sub-secs. (1) and (6), *ante*.

(*i*) **Number of guardians.** The power to determine or alter the number of guardians was exercised by the Local Govt. Bd. under the Poor Law Amend. Acts, 1834 (4 & 5 Will. 4, c. 76), sec. 38; and 1844 (7 & 8 Vict. c. 101), sec. 18.

(*k*) **Adding parishes to each other.** The Poor Law Amend. Act, 1868 (31 & 32 Vict. c. 122), sec. 6, provides that the Board "may, by order under seal, add any parish in a union, the population of which parish, according to the census last declared, shall not exceed three hundred, the annual rateable value whereof shall not exceed the average rateable value of the parishes in the same union according to the valuation lists in force for the time being, to some adjoining parish in the same union for the purposes of the election of guardians; and the persons qualified to elect such guardians in either parish shall be qualified to vote at such election for the parishes so united."

(*l*) **Dividing parishes into wards.** The Divided Parishes and Poor Law Amend. Act, 1876 (39 & 40 Vict. c. 61), sec. 12, provides that "the Loc. Govt. Bd. may, by their order, divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall, for the purposes of such election, be deemed to be a separate parish, except so far as the said Board may otherwise order."

(*m*) **Retirement of guardians.** See note to sec. 20 (6), *ante*.

(*n*) **Union in more than one county.** Croydon Union is the only poor law union which is situate partly within and partly without the administrative county of London. See Statement of Poor Law Unions presented to Parliament in 1887, C-5191.

Provided that if any order under this sub-section is, within six weeks after the making thereof, objected to by any of the county councils concerned, or by any committee of these councils authorised in that behalf, it shall be of no effect until confirmed by the Local Government Board. 56 & 57 Vict. c. 73.

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67. Where any powers and duties are transferred by this Act from one authority to another authority (*o*)— Transfer of property and debts and liabilities.

(1) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and

(2) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and

(3) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

68.—(1) Where any adjustment is required for the purpose of this Act, or of any order, or thing made or done under this Act, then, if the adjustment is not otherwise made, the authorities interested may make agreements for the purpose, and may thereby adjust any property, income, debts, liabilities, and expenses, so far as affected by this Act, or such scheme, order, or thing, of the parties to the agreement. Adjustment of property and liabilities.

(2) The agreement may provide for the transfer or retention of any property, debts, or liabilities, with or without any conditions, and for the joint use of any property, and for payment by either party to the agreement in respect of property, debts, and liabilities so transferred or retained, or of such joint user, and in respect of the salary or remuneration of any officer or person, and that either by way of an annual payment or, except in the case of a salary or remuneration, by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the Local Government Board: provided that where any of the authorities interested is a board of guardians, any such agreement, so far as it relates to the joint use of any property, shall be subject to the approval of the Local Government Board.

(3) In default of an agreement, and as far as any such agreement does not extend, such adjustment shall be referred to arbitration in accordance with the Arbitration Act, 1889 (*p*), and the arbitrator shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily, and his award may provide for any matter for which an agreement might have provided. 52 & 53 Vict. c. 49.

(4) Any sum required to be paid by any authority for the purpose of adjustment may be paid as part of the general expenses of exercising their duties under this Act, or out of such special fund as the authority, with the approval of the Local Government Board, direct, and if it is a capital sum the payment thereof shall be a purpose for which the authority may borrow under the Acts relating to such authority, on the security of all or any of the funds, rates, and revenues of the authority, and any such sum may be borrowed without the consent of any authority, so that it be repaid within such period as the Local Government Board may sanction.

(5) Any capital sum paid to any authority for the purpose of any adjustment under this Act shall be treated as capital, and applied, with the sanction of the Local Government Board, either in the repayment of debt or for any other purpose for which capital money may be applied.

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(*o*) **Transfer of powers and duties.** This section applies to London in the case of the transfer under the Act, by the Local Govt. Bd., of powers and duties to a London sanitary authority. See sec. 33, sub-secs. (1) and (6), and notes thereto, *ante*.

(*p*) **Arbitration Act, 1889.** This Act regulates submissions to and proceedings on arbitration.

56 & 57 Vict. c. 73.

71. A copy of every order made by a county council or joint committee in pursuance of this Act shall be sent to the Local Government Board, and, if it alters any local area or name, also to the Board of Agriculture.

Supplemental provisions as to county council orders.

72. * * * * * * *

Provisions as to local inquiries.

(4) Where a county council hold a local inquiry under this Act or under the Local Government Act, 1888, on the application of the council of a parish or district, or of any inhabitants of a parish or district, the expenses incurred by the county council in relation to the inquiry (including the expenses of any committee or person authorised by the county council) shall be paid by the council of that parish or district, or, in the case of a parish which has not a parish council, by the parish meeting; but, save as aforesaid, the expenses of the county council incurred in the case of inquiries under this Act shall be paid out of the county fund.

Provisions as to Sundays and bank holidays.

73. When the day on which any thing is required by or in pursuance of this Act to be done is Sunday, Christmas Day, or Good Friday, or a bank holiday, that thing shall be done on the next following day, not being one of the days above mentioned.

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Construction of Act. 51 & 52 Vict. c. 41.

75.—(1) The definition of "parish" in section one hundred of the Local Government Act, 1888 (*q*), shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

(2) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

The expression "election" includes both the nomination and the poll.

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The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

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The expression "local and personal Act" includes a provisional order confirmed by an Act and the Act confirming the order.

The expression "prescribed" means prescribed by order of the Local Government Board.

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Short title.

77. This Act may be cited as the Local Government Act, 1894.

Part V.

PART V.—TRANSITORY PROVISIONS.

78. * * * * * * *

First elections.

79.—(1) (2) (3) (4) . . .

(5) Where guardians or rural district councillors retire together at the end of the triennial period, the guardians and district councillors first elected under this Act shall retire on the fifteenth day of April one thousand eight hundred and ninety-eight.

(6) Of the first urban district councillors elected under this Act, the third who are respectively to retire on the fifteenth day of April one thousand eight hundred and ninety-six and one thousand eight hundred and ninety-seven shall be determined according to their place on the poll at the election, those that were lowest on the poll retiring first. If there was no poll, or if a question arises in consequence of an inequality of votes between two or more councillors, the

(*q*) **Definitions.** See the Loc. Govt. Act, 1888, sec. 100, *ante*, p. 62.

matter shall be determined by ballot conducted under the direction of the council. 56 & 57 Vict. c. 73.

(7) In the case of an urban district divided into wards, the foregoing provisions with respect to retirement shall apply separately to each ward.

* * * * * * *

(10) The foregoing provisions shall apply to the existing members and first members elected under this Act of the local board of Woolwich and of any vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same, and to the existing and first auditors elected under those Acts in like manner as if they were members of urban sanitary authorities or urban district councillors, as the case may require, except that the date of the annual election shall be substituted for the fifteenth day of April.

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81.—(1) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council, and for the purposes of this section the body appointing a surveyor of highways shall be deemed to be a highway authority and any paid surveyor to be an officer of that body. Existing officers.

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(4) Every such officer, vestry clerk, and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

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(6) So much of any enactment as authorises the appointment of assistant overseers by a board of guardians shall be repealed as from the appointed day.

(7) Section one hundred and twenty of the Local Government Act, 1888 (*r*), which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the council, and any expenses incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected. 51 & 52 Vict. c. 41.

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85. [*Saving for current rates, accounts, and proceedings.*]

86. [*Saving for existing securities and discharge of debts.*]

87. [*Saving for existing byelaws.*]

88. [*Saving for pending contracts, &c., actions or proceedings, and causes of action or proceeding.*]

89. The Acts specified in the second schedule to this Act are hereby repealed as from the appointed day to the extent in the third column of that schedule mentioned, and so much of any Act, whether public general or local and personal, as is inconsistent with this Act is also hereby repealed. . . .

SCHEDULES.

* * * * * * *

(*r*) **Compensation to officers.** See the Loc. Govt. Act, 1888, sec. 120, *ante*, p. 69.

56 & 57 Vict. c. 73.

Sec. 89.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
* *	* *	* * *
18 & 19 Vict. c. 120 ..	The Metropolis Management Act, 1855.	Section six. Sections thirteen to twenty-seven. In section thirty the words "or custom." Section fifty-four. In section two hundred and thirty-five the words "under this Act," where they secondly occur.
19 & 20 Vict. c. 112 ..	The Metropolis Management Amendment Act, 1856.	Sections six, seven, and eight.
* *	* *	* * *
25 & 26 Vict. c. 102 ..	The Metropolis Management Amendment Act, 1862.	Section thirty-six; and section forty from "by rating", to "of such parish."
* *	* *	* * *
39 & 40 Vict. c. 79 ..	The Elementary Education Act, 1876.	In section seven the words "so "however that in the case of "a committee appointed by "guardians one-third at least "shall consist of ex-officio "guardians, if there are any "and sufficient ex-officio "guardians."
47 & 48 Vict. c. 70 ..	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	Section thirty-six, from "(*h*). The Local Government Board" to "validity of any vote."
55 & 56 Vict. c. 53 ..	The Public Libraries Act, 1892.	Sub-section three of section one. The first schedule so far as it applies to rural parishes.

MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884 (*s*).

47 & 48 Vict. c. 70. An Act for the better prevention of corrupt and illegal practices at municipal and other elections.

[14th August, **1884.**

Short title.

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Corrupt Practices.

Definition and punishment of corrupt practice at municipal election.

2.—(1) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in part one of the third schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

(2) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election (*t*).

Incapacity of candidate reported guilty of corrupt practice, 45 & 46 Vict. c. 50.

3.—(1) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court

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(*s*) **Application of Act.** This Act is applied to County Council elections by the Loc. Govt. Act, 1888, sec. 75, *ante*. *Walker, Ex parte*, 22 Q. B. D. 384; 58 L. J. Q. B. 190; and to the election of vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48 (3), *ante*, as adapted by the Vestrymen and Auditors (London) Election Order, 1897, rr. 16 and 25, *post*.

(*t*) **Punishment and incapacities.** At a parliamentary election, a person who commits any corrupt practice, other than personation, or aiding, &c., that offence, is guilty of a misdemeanour, and on conviction on indictment is liable to imprisonment, with or without hard labour, for a term not exceeding one year, or a fine not exceeding two hundred pounds. Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), sec. 6 (1). A person who commits the offence of personation, or of aiding, abetting, counselling, or procuring the commission of that offence, is guilty of felony, and liable on conviction on indictment to imprisonment for a term not exceeding two years, together with hard labour. *Ib.* sec. 6 (2). In addition to the above, a person convicted on indictment of any corrupt practice is incapable during a period of seven years from the date of his conviction, (a) of being registered as an elector or voting at any election in the United Kingdom, either parliamentary or for any public office; or (b) of holding any public or judicial office, and if he holds such office the office is vacated. *Ib.* sec. 6 (3). Any person so convicted is also incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction. *Ib.* sec. 6 (4). See also secs. 22—24, and part ii. of sched. 3 of the present Act, *post*. Sec. 83 of the same Act defines "public office" to mean, *inter alia*, "any office under the Crown, . . . or under any Acts relating to local government, whether the office is that of . . . chairman, alderman, councillor, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district or other area, or is the office of . . . clerk, or other officer under a council, board, commission, or other authority, or is any other office to which a person is appointed under any such . . . Act as above mentioned, and includes any other municipal or parochial office."

47 & 48 Vict. c. 70.

shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

Certain expenditure to be illegal practice.

4.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(a) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise (*u*); or

(b) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(c) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

Expenses in excess of maximum to be illegal practice.

5.—(1) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following (*x*); (that is to say),

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.

(2) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be

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(*u*) **Conveyance of electors.** Payments for stabling and baiting of horses sent for the conveyance of voters to the poll were held to be illegal within the meaning of the corresponding provision of the Corrupt and Ill. Prac. Prev. Act, 1883. *Lichfield*, 5 O'M. & H. 30. Under the same Act, a parliamentary election was declared void where payment was made for the conveyance of a single voter, the Court not being satisfied that the candidate and his agent had taken all reasonable means for preventing corrupt and illegal practices. *Southampton*, 5 O'M. & H. 20.

(*x*) **Maximum expense.** Sec. 5 applies to county council elections. Loc. Govt. Act, 1888, sec. 75, *ante*. But it does not apply to elections to the office of vestryman or auditor, at which there is no limit to a candidate's expenses. See sec. 37, and note thereto, *post*.

reduced by one-fourth, or if there are more than two joint candidates by one-third. 47 & 48 Vict. c. 70.

(4) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: provided that—

(a) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(b) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(c) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactment respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequence of having incurred such excess of expenses.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

6.—(1) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such, he shall be guilty of an illegal practice.

(2) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

8.—(1) An illegal practice within the meaning of this Act shall be deemed to be an offence against part four of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

47 & 48 Vict. c. 70.

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

Employment of hackney carriages, or of carriages and horses kept for hire.

10.—(1) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt withdrawal from a candidature.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Certain expenditure to be illegal payment.

12.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners (*y*), cockades, ribbons, or other marks of distinction (*z*).

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

Certain employment to be illegal.

13.—(1) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(a) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

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(*y*) **Banners.** Strips of canvas, bearing the candidate's name, stretched across a street, were held to be banners within the corresponding section of the Corrupt and Ill. Prac. Prev. Act, 1883. *Stepney*, 4 O'M. & H. 179; Day's El. Cas. 119. So were also portraits of the candidate printed on linen, and furnished with a lath at the top and bottom. *St. George's Division*, 5 O'M. & H. 107.

(*z*) **Marks of distinction.** Cards for hats, bearing the candidate's portrait, were held to be marks of distinction within the Corrupt and Ill. Prac. Prev. Act, 1883. *Walsall*, 4 O'M. & H. 137; Day's El. Cas. 109. But canvassing cards, inviting the recipients to vote, and not intended to be worn, were held not to be illegal, although it was proved that they were largely worn in the hats of the candidate's supporters. *East Clare*, 4 O'M. & H. 163; Day's El. Cas. 164. And see *Pontefract*, 4 O'M. & H. 200; Day's El. Cas. 127.

(b) one polling agent may be employed in each polling station (*a*): 47 & 48 Vict. c. 70.

Provided that this section does not apply to any engagement or employment for carrying into effect a contract bonâ fide made with any person in the ordinary course of business.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act (*b*).

(3) A person legally employed for payment under this section may or may not be an elector, but may not vote (*c*).

Name and address of printer on placards.

14. Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed (*d*), published, or posted any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Saving for creditors.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

Use of certain premises for committee rooms or meetings to be illegal hiring.

16.—(1) (a) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(b) Any premises where intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same, in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Punishment of illegal payment, employment, or hiring.

17.—(1) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(*a*) **Polling agent.** Sub-sec. (1) (b) does not apply to elections of vestrymen and auditors, as to which provisions are substituted by the Vestrymen and Auditors (London) Election Order, 1897, rr. 16 and 25 (4), *post*.

(*b*) **Illegal employment.** Under the corresponding provisions of the Corrupt and Ill. Prac. Prev. Act, 1883, it is illegal to pay canvassers (*Stepney*, Day's El. Cas. 119); or to hire persons to keep order at meetings (*Ipswich*, 4 O'M & H. 72); or to provide refreshments for workers on the polling day (*Barrow-in-Furness*, 4 O'M. & H. 78). But persons employed for payment are not debarred from canvassing voluntarily in their own time, provided that in doing so they act honestly. *Elgin and Nairn*, 5 O'M. & H. 13; *Lichfield*, 5 O'M. & H. 28.

(*c*) **Paid employee not to vote.** Where a sub-agent at a parliamentary election voted, and on hearing this the agent declined to pay him his fee, it was held that no offence had been committed within the corresponding provision of the Corrupt and Ill. Prac. Prev. Act, 1883. *Lichfield*, 5 O'M. & H. 29.

(*d*) **Printing; causing to be printed.** As to what will amount to printing or causing to be printed by an agent, see *Betteworth* v. *Allingham*, 16 Q. B. D. 44; 50 J. P. 55.

47 & 48 Vict. c. 70.

(2) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

Avoidance of election for extensive illegal practices, &c.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

(a) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(b) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate (*e*); and

(c) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(d) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

Power of High Court and election court to except innocent act from being illegal practice, &c.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

(a) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

(b) that such act or omission arose from inadvertence (*f*) or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c) that such notice of the application has been given in the said borough as to the court seem fit (*g*);

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall

(*e*) **Reasonable means.** See *Southampton*, *ante*, p. 546.

(*f*) **Inadvertence** in the above section means negligence or carelessness where the circumstances show an absence of bad faith. *Lenanton, Ex parte*, 53 J. P. 263; 5 T. L. R. 173. See also *Haseldine, Ex parte*, *infra*.

(*g*) **Notice of application.** Notice of application for relief should be given (1) to the opposing candidate or candidates, (2) to the returning officer, (3) should be posted about the district, and (4) advertised in newspapers circulating in the district. No notice to the Attorney-General is necessary. *Lenanton, Ex parte*, *supra*.

not be subject to any of the consequences under this Act of the said act or omission (*h*). 47 & 48 Vict. c. 70.

Sending in claims and making payments for election expenses.

21.—(1) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election (*i*), and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election (*h*), and not otherwise (*k*), and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election (*i*), make a return (*k*) to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3) Within twenty-eight days after the day of election (*i*) of a councillor every candidate at such election shall send to the town clerk a return (*k*) of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration (*k*) by the candidate made before a justice in the form set forth in the fourth schedule to this Act, or to the like effect.

(4) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration, he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or

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(*h*) **Court may grant relief.** The Court has no power to grant relief to a printer who has printed a bill, &c., without the name and address of the printer and publisher on the face of it, in contravention of sec. 14, *ante*. *Lenanton, Ex parte, supra*. Ignorance of the provisions of the Act is not, as a rule, a sufficient or valid reason for relief. *Walker, Ex parte, ante*, p. 545. An appeal lies to the Court of Appeal against the refusal of the Divisional Court to make an order under this section. *Ib.*; *Thomas, Ex parte*, 60 L. T. (N. S.) 728. For the numerous cases in which the Court has exercised its discretion, see 5 Times Law Reports; Day's Election Cases; and 4 & 5, O'Malley & Hardcastle.

(*i*) **Within . . . days after,** i.e., exclusive of the day of election, but inclusive of the days on which the claim, payment, return, and declaration are made. *Robinson* v. *Waddington, ante*, p. 199.

(*k*) **Claims and payments; return and declaration.** In elections for vestrymen or auditors no time is limited for sending in or paying claims, and no return or declaration of expenses is required. See sec. 37, and note thereto, *post*.

47 & 48 Vict. c. 70.

officer, or by reason of inadvertence (*n*), or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on the production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Application of secs. 37 and 38 of 46 & 47 Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in part two of the third schedule to this Act, shall apply as part of this Act.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24.—(1) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(*n*) **Inadvertence.** Where a candidate, who had omitted to make a return of expenses, applied for relief on an affidavit which stated certain facts in an uncandid way, and, without corroboration, merely alleged that the omission was due to inadvertence, the Court refused the application. *Haseldine, Ex parte*, 59 J. P. 71.

(4) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses. 47 & 48 Vict. c. 70.

(5) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned. 45 & 46 Vict. c. 50.

Proceedings on Election Petitions.

25.—(1) A municipal election petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse (*o*). Petition for illegal practice.

(2) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried. Time for presentation of petition alleging illegal practices.

(3) Any election petition presented within the time limited by the Municipal Corporations Act, 1882 (*p*), may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented. 45 & 46 Vict. c. 50.

(4) This section shall apply notwithstanding the illegal practice is also a corrupt practice (*p*).

26.—(1) Before leave for the withdrawal of a municipal election petition (*q*) is Withdrawal of election petition.

(*o*) **Time for election petition.** As no return is made in elections for vestrymen or auditors, the Vestrymen and Auditors (London) Election Order, 1897, r. 25 (5), provides, in their case, that "An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election."

(*p*) **Petition on other grounds.** See the Mun. Corp. Act, 1888, secs. 87 and 88, *ante*, p. 103.

(*q*) **Withdrawal of election petition.** See also sec. 95 of the Mun. Corp. Act, 1882, *ante*, p. 104.

47 & 48 Vict. c. 70.

granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5) Copies of the said affidavits shall be delivered to the director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the director of public prosecutions or his assistant, or other representative, may consider material.

(6) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.

45 & 46 Vict. c. 50.

(7) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

27. [*Continuation of trial of election petition* (*r*).]

28. [*Attendance of director of public prosecutions on trial of election petition, and prosecution by him of offenders* (*r*).]

29. [*Power to election court to order payment by borough or individual of costs of election petition* (*r*).]

Miscellaneous.

General provisions as to prosecution of offences under this Act.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the director of public prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six

(*r*) **Trial of election petitions.** The procedure on the trial of election petitions is beyond the scope of this work. For full treatment of the subject, see "Rogers on Elections," 7th ed., vol. iii.

and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions :— 47 & 48 Vict. c. 70.

(a) Where the director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and 46 & 47 Vict. c. 51.

(b) General rules for the purposes of part four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and 45 & 46 Vict. c. 50,

(c) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive. sec. 94 (7).

31. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date. Person incapacitated by conviction or report to vacate seat or office.

32.—(1) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate. Payment and recovery of costs.

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to her Majesty, and in either case may be recovered accordingly.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office. Service of notices.

34. In this Act expressions have the same meaning as in the Municipal Corporation Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election. Definitions. 45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll (*s*).

35. [*Application to City of London of Act and of part iv. of 45 & 46 Vict. c. 50.*]

36. [*Application of Act to elections for offices mentioned in first schedule, post* (*t*).]

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account Exemption from provisions as to maximum expenses.

(*s*) **Burgess roll.** In county council elections substitute "county register." See the County Electors Act, 1888, sec. 7 (2), *post*, vol. ii. In elections of vestrymen and auditors substitute "register of parochial electors." Vestrymen and Auditors (London) Election Order, 1897, r. 25 (7), *post*.

(*t*) **Application of Act.** See note to sched. 1, *post*.

47 & 48 Vict. c. 70.

of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the first schedule to this Act (*u*).

38. [*Repeal of Acts in second schedule, post.*]

39. [*Commencement of Act, October 1st, 1894.*]

Extent of Act.

Duration of Act.

40. [*Act not to extend to Scotland or Ireland.*]

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer (*x*).

SCHEDULES.

Sec. 36.

FIRST SCHEDULE.

ELECTIONS to which this Act extends (*y*).

In England.

[*Member of local board, and member of improvement commissioners, as defined by the Public Health Act*, 1875. *Poor law guardian. Member of school board.*]

Sec. 38.

SECOND SCHEDULE.

[*Enactments Repealed.*]

Sec 2.

THIRD SCHEDULE.

PART I.

Enactments defining Corrupt Practices.—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, 17 & 18 Vict. c. 102, sections 2 and 3.

Bribery defined.

S. 2. The following persons shall be deemed guilty of bribery (*z*), and shall be punishable accordingly :—

(1) Every person who shall, directly, or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or

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(*u*) **Exempted elections.** Sec. 37 is applied to elections of vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48 (3) (b), *ante*; and is to be read as if a reference to an election of vestrymen or auditors was substituted for a reference to any of the elections mentioned in sched. 1, *post*. Vestrymen and Auditors (London) Election Order, 1897, r. 25 (8), *post*.

(*x*) **Duration of Act.** The Act was continued to Dec. 31st, 1897, by the Expiring Laws Continuance Act, 1896 (59 & 60 Vict. c. 39).

(*y*) **Extent of Act.** This Act is applied to county council elections by the Loc. Govt. Act, 1888, sec. 75, *ante*. It is also applied to the election of vestrymen and auditors by the Loc. Govt. Act, 1894, sec. 48 (3), *ante*, and is adapted for that purpose by the Vestrymen and Auditors (London) Election Order, 1897, rr. 16 and 25, *post*.

(*z*) **Bribery.** A single act of bribery, however trifling, may avoid an election. *Blackburn*, 1 O'M. & H. 202 ; *Shrewsbury*, 2 O'M. & H. 37 ; *Norwich*, *ib.* 41 ; *Pontefract*, 4 O'M. & H. 200 ; Day's El. Cas. 125. As to the law of bribery generally, see "Rogers on Elections."

employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election. 47 & 48 Vict. c. 70.

(3) Every person who shall, directly, or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election : provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses bonâ fide incurred at or concerning any election.

S. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :— Bribery further defined.

(1) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 49.

S. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly ; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly. Corrupt payment of rates to be punishable as bribery.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 24.

S. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name (*a*). Personation defined.

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, ss. 1 and 2.

S. 1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating. What is treating.

(*a*) **Personation.** Where a person is on the register in a wrong name, he is not guilty of personation if he votes in that name. *Reg.* v. *Fox*, 16 Cox C. C. 166.

47 & 48 Vict. c. 70.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

S. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 77.

Definitions.

S. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

Sec. 23.

PART II.

Enactments relating to Disqualification of Electors.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 Vict. c. 51, sections 37 and 38.

Prohibition of disqualified persons from voting. 35 & 36 Vict. c. 60. 45 & 46 Vict. c. 50.

S. 37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under part iv. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at any election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

S. 38. (1) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court * * * to have been guilty, at an election, of any corrupt or illegal practice, the court * * * shall cause notice to be given to such person (*b*), and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself (*c*) and of calling evidence in his defence to show why he should not be so reported.

* * * * * * *

(5) Every person who, after the commencement of this Act, is reported by any election court * * * to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty. * * *

(6) Where a person who is a justice of the peace is reported by any election court * * * to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the director of public prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(*b*) **Notice to person before report.** Where a commissioner reported persons to have been guilty of corrupt practices, it was held that the High Court had no jurisdiction to set aside or amend his report upon the ground that the prescribed notice was not given to the persons reported. *Preece* v. *Harding*, 24 Q. B. D. 110; 59 L. J. Q. B. 82.

(*c*) **Heard by himself.** Such a person, though entitled to be heard by himself, cannot be heard by either counsel or solicitor. *Reg.* v. *Mansel*, 23 Q. B. D. 29; 60 L. T. (N. S.) 860.

(7) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court * * * to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the director of public prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession. 47 & 48 Vict. c. 70.

(8) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect :—

(a) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licences :

(b) If it appears to an election court * * * that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court * * * (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same ; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences :

(c) Where an entry is made in the register of licences of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

* * * * * * *

FOURTH SCHEDULE. Sec. 21.

Form of Declaration by Candidate as to Expenses.

I , having been a candidate at the election of councillor for the borough [or ward] of on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by any one to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*
Justice of the Peace for

VESTRYMEN AND AUDITORS (LONDON) ELECTION ORDER, 1897.

Rules as to Nomination and Election in 1897. [24th March, **1897.**

To the County Council of the Administrative County of London;—

To the Vestries elected under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts;

To the Woolwich Local Board of Health;—

To the Vestry Clerk, if any, of every parish in which the vestry is elected under the Acts aforesaid;—

To the Clerk to the Woolwich Local Board of Health;—

And to all others whom it may concern.

Whereas by sub-section (1) of section 31 of the Local Government Act, 1894, it is enacted as follows:—[*Reciting sec.* 31 (1), *ante.*]

And whereas by section 23 of the said Act it is, amongst other things, enacted as follows:—[*Reciting sec.* 23, *sub-secs.* (2), (3), (4) *and* (5), *ante.*]

And whereas by section 48 of the said Act it is, amongst other things, enacted as follows:—[*Reciting sec.* 48, *sub-sec.* (2) (*i*), (*ii*), (*v*) *and* (*vi*); *sub-sec.* (3); *and the first paragraph of sub-sec.* (4); *and sub-sec.* (4) (*b*), *ante.*]

Now therefore, we, the Local Government Board, in pursuance of the powers given to us in that behalf, do, by this our Order, direct that any election held in the present year to fill any ordinary vacancies amongst the members of the Woolwich Local Board of Health and of each of the vestries under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts, and amongst the auditors of parishes under those Acts, and any casual vacancy amongst the members of the local board and vestries aforesaid, which can be filled at such election, shall, subject to any directions which may be given by us, be conducted according to the following rules, and such rules shall be observed:—

Returning Officer.

1.—(1) The returning officer shall be the vestry clerk of the parish.

(2) If there is more than one vestry clerk of the parish, the vestry shall determine which of such vestry clerks shall act as returning officer.

(3) If there is no vestry clerk, or if the clerk is unwilling to act as returning officer, or if the office of clerk is vacant at the time when any duty relative to the election has to be performed by the returning officer, or if the clerk from illness or other sufficient cause is unable to perform such duty, the vestry shall appoint some other person to act as returning officer or to perform such of the duties of the returning officer as then remain to be performed, as the case may be.

(4) The returning officer shall appoint an office for the purpose of the election.

(5) The returning officer may, in writing, appoint one or more fit persons to be his deputy or deputies for all or any of the purposes relating to the election of vestrymen and auditors, and shall appoint such a deputy in the case and for the purposes mentioned in rule 18 (1) of this order. A deputy returning officer shall have all the powers, duties, and liabilities of the returning officer in relation to the matters in respect of which he is deputy.

(6) The same person shall act as deputy returning officer in respect of the election both of vestrymen and of auditors for the parish.

Notice of Election.

2. Not later than the day prescribed for that purpose by the first schedule to this Order, the returning officer shall prepare and sign a notice of the election of vestrymen and auditors in the parish, and shall cause public notice to be given of the same in the parish. The notice shall be in the form No. 1 of the second schedule to this Order, or in a form to the like effect.

Nomination of Candidates.

3.—(1) Each candidate for election as a vestryman or as an auditor shall be nominated in writing.

(2) The nomination paper shall state the name of the parish or ward for which the candidate is nominated, the surname and other name or names in full of the candidate, and his place of abode and description, and whether he is qualified as a parochial elector of the parish, or by having during the whole of the twelve months preceding the election resided in the parish. It shall be signed by two parochial electors of the parish or ward, as proposer and seconder, and no more, and shall state their respective places of abode. In the case of the nomination of an auditor, it shall contain a statement signed by the candidate that he assents to serve as an auditor of the accounts of the parish. It shall be in the form No. 2 in the second schedule to this Order, or in a form to the like effect.

(3) The name of more than one candidate shall not be inserted in any one nomination paper.

(4) Any parochial elector shall not sign more nomination papers than there are vestrymen or auditors, as the case may be, to be elected for the parish or ward for which the election is to be held. He shall not sign a nomination paper for the parish or for any ward thereof unless he is registered as a parochial elector in respect of a qualification therein. Nor shall he sign nomination papers for the office of vestryman, or, as the case may be, for the office of auditor, for more than one ward in the parish.

(5) If a parochial elector shall sign nomination papers for the office of vestryman, or, as the case may be, for the office of auditor, for more than one ward in the parish, or shall sign a larger number of nomination papers than the number of vestrymen or of auditors, to be elected for the parish or ward, such of the nomination papers signed by him for vestrymen, or, as the case may be, for auditors, as relate to the first ward for which a nomination paper signed by him is received by the returning officer shall alone be valid, and of the nomination papers signed by him which relate to the parish or ward such as are first received by the returning officer up to the number of vestrymen or auditors to be so elected shall alone be valid. Provided that, for the purposes of this paragraph, nomination papers not properly filled up and signed shall be excluded.

Nomination Papers to be provided.

4. The returning officer shall provide separate nomination papers for the offices of vestryman and auditor. Any parochial elector may obtain nomination papers from the returning officer free of charge.

Time for sending in Nomination Papers.

5. Every nomination paper shall be sent to the returning officer so that it shall be received at his office within the time prescribed for that purpose by the first schedule to this Order. A nomination paper received after that time shall not be valid. The returning officer shall note on each nomination paper whether it was received before or after that time.

Dealing with Nominations by Returning Officer.

6.—(1) The returning officer shall number the nomination papers in the order in which they are received by him; and the first valid nomination paper received for a candidate shall be deemed to be the nomination of that candidate.

(2) The returning officer shall, as soon as practicable after the receipt of any nomination paper, examine the same, and decide whether it has or has not been properly filled up and signed as required by rule 3 (2), and whether it is or is not invalid under rule 3 (5) or rule 5. His decision that a nomination paper has been so filled up and signed and is not invalid as aforesaid shall be final, and shall not be questioned in any proceeding whatever.

(3) If the returning officer shall decide that a nomination paper is invalid, he shall put a note on it to this effect, stating the grounds of his decision, and he shall sign such note.

(4) After deciding that the nomination of any candidate is valid, or (except where a nomination of any candidate has been decided to be valid) that a

nomination paper for the candidate is invalid, the returning officer shall, not later than the day prescribed for that purpose by the first schedule to this Order, send, by post or otherwise, notice of his decision to the candidate.

Statement as to Persons nominated.

7. Not later than the day prescribed for that purpose by the first schedule to this Order, the returning officer shall make out a statement in the form No. 3 in the second schedule to this Order, or in a form to the like effect, containing the names, places of abode, and descriptions of the persons nominated as vestrymen and auditors for the parish or for the several wards, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He shall forthwith cause a copy thereof to be affixed on or near to the principal external gate or door of the offices of the vestry. If there are no such offices, he shall cause a copy of such statement to be posted in some conspicuous place or places within the parish.

Withdrawal of Candidate.

8. Any candidate may withdraw his candidature by delivering or causing to be delivered at the office of the returning officer, within the time prescribed for that purpose by the first schedule to this Order, a notice in writing of such withdrawal, signed by him.

Relation of Nomination to Election (a).

9.—(1) If the number of candidates who receive valid nominations and who do not withdraw their candidature under rule 8 exceeds that of the persons to be elected as vestrymen and auditors respectively, the vestrymen and auditors shall be elected from amongst the persons nominated.

(2) If the number of valid nominations does not exceed the number of vestrymen and auditors respectively to be elected, or if, by the withdrawal of any candidate as provided by rule 8, the number of candidates is reduced to a number not exceeding the number to be elected, or if the number of candidates is otherwise so reduced, the returning officer shall, as early as practicable, give public notice in the parish to the effect that no poll will be taken, and that the candidates, or the remaining candidates, as the case may be, will be declared to be elected; and also, in the case of vestrymen, if the number of such candidates is less than the number to be elected, that such of the retiring vestrymen for the parish as were highest on the poll at their election, or, if the poll was equal or there was no poll, as shall have been selected for that purpose by the returning officer by lot to make up the required number, will be declared to be deemed to be re-elected.

(3) The returning officer shall forthwith send, by post or otherwise, a copy of any notice under this rule to each of the persons who will be declared to be elected, or to be deemed to be re-elected.

(4) The notice shall be in the form No. 4 in the second schedule to this Order, or in a form to the like effect.

(5) Section 56 of the Municipal Corporations Act, 1882, shall be deemed to be altered and adapted by this rule, so as to apply to the election of vestrymen in the parish as herein provided.

Polls to be taken together.

10. Any poll for the election of vestrymen in the parish and any poll for the election of auditors therein shall be taken together.

Polling Districts.

11.—(1) (a) The returning officer may, if he thinks fit, divide the parish into polling districts for the election of vestrymen and auditors, but each district shall consist of an area for which a separate list of parochial electors will be available.

(*a*) **Relation of nomination to election.** Rule 9 is an adaptation of sec. 56 of the Mun. Corp. Act, 1882, *ante*, p. 96. See notes thereto.

(b) The polling districts for the election of vestrymen and of auditors for the parish shall be the same.

(2) If the parish is divided into polling districts, each parochial elector shall give his vote in the polling district in which the property in respect of which he is entitled to vote is situate, and if it is situate in more than one polling district, he may vote in any one (but in one only) of the polling districts in which it is situate.

Polling Places and Polling Stations.

12. The returning officer shall determine the number and situation of the polling places and polling stations.

Provided as follows:—

(a) That no premises licensed for the sale of intoxicating liquor shall be used for a polling place:

(b) That, unless the London County Council otherwise direct, where the number of parochial electors in the parish or (if the parish is divided into polling districts) in any polling district is not more than seven hundred only one polling station shall be provided for the parish or polling district; and so on for each additional seven hundred parochial electors, or for any less number of parochial electors over and above the last seven hundred.

Notice of the Poll.

13.—(1) If a poll has to be taken, the returning officer shall, within the time prescribed for that purpose by the first schedule to this Order, give public notice thereof. The notice shall specify—

(a) the day and hours fixed for the poll;

(b) the number of vestrymen and auditors to be elected for the parish or ward;

(c) the names, place of abode, and description of each candidate for the parish or ward whom he has decided to be nominated by a valid nomination paper, and who has not withdrawn his candidature;

(d) the names of the proposer and seconder who signed the nomination paper of each candidate;

(e) a description of the polling districts, if any; and

(f) the situation and allotment of the polling places and the description of the persons entitled to vote thereat and at the several polling stations.

(2) The notice shall be in the form No. 5 in the second schedule to this Order, or in a form to the like effect, or in the form No. 6 in that schedule, or in a form to the like effect.

Presiding Officers.

14. The returning officer, or some person appointed by him for the purpose, shall preside at each polling station. The person presiding at any polling station shall be called the presiding officer.

Compartments of Polling Stations.—Ballot Papers.

15. The returning officer shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and shall furnish each presiding officer with such number of ballot papers as may be necessary for effectually taking the poll at the election.

Polling Agents (b).

16.—(1) If the number of candidates to be elected as vestrymen does not exceed three, each candidate may appoint a polling agent for each polling station. If the number of such candidates exceeds three but does not exceed twenty, three polling agents, or if the number of candidates exceeds twenty but does not exceed forty, four polling agents, or if the number of candidates exceeds forty but does not exceed sixty, five polling agents, or if the number of candidates exceeds sixty, six polling agents, may be appointed for each polling station.

(*b*) **Polling agents.** Rule 16 modifies the application of sec. 13 (b) of the Mun. Elects. (Corr. and Ill. Prac.) Act, 1884, *ante*. See r. 25 (4), *post*.

(2) Each appointment of a polling agent shall be in writing, signed by the candidate or candidates making the same, and shall be delivered at the office of the returning officer not less than two clear days before the day of the poll. Provided that no candidate shall sign more than one appointment of a polling agent for any polling station.

(3) If the number of polling agents whose appointments have been so delivered is more than the number allowed as aforesaid, those whose appointments are signed by the larger number of candidates, up to the number allowed, shall alone be valid; or if, by reason of several appointments having the same number of signatures, the validity of the appointments cannot be decided as aforesaid, the returning officer shall determine which of the appointments so signed shall have effect.

(4) The foregoing provisions shall apply to the appointment of polling agents by candidates for election as auditors, as if the word "auditors" were substituted therein for the word "vestrymen."

(5) Except as aforesaid, no polling agent, whether paid or unpaid, shall be appointed for the purposes of the election.

Questions to Elector.

17.—(1) The presiding officer may, and if required by any parochial elector of the parish or any polling agent appointed under rule 16 shall, put to any elector at the time of his applying for a ballot paper, but not afterwards, the following questions, or one of them, and no other:—

(a) Are you the person entered in the parochial register for this parish [*or* ward] as follows [*read the whole entry from the register*]?

(b) Have you already voted at the present election of vestrymen and auditors [*or* vestrymen *or* auditors, *as the case may be*] in this or any other ward in the parish?

(2) A person required to answer either of these questions shall not receive a ballot paper or be permitted to vote until he has answered it.

Counting the Votes.

18.—(1) If the returning officer does not himself count the votes he shall appoint some person to act as deputy returning officer for the parish as regards the custody and opening of the ballot boxes, the counting and recording of the votes, and the declaration of the number of votes given for each candidate, and of the election of the candidate or candidates to whom the largest number of votes has been given. The person so appointed shall, in addition to his other powers and duties, have all the powers and duties of the returning officer in relation to the matters aforesaid, and to the decision of any question as to any ballot paper and otherwise as to the ballot papers. If the parish is divided into wards, the returning officer himself shall not, except with the consent of the London County Council, count the votes in more than two wards.

(2) If there is a poll for the election of both vestrymen and auditors in the parish, the same person shall discharge the duties referred to in paragraph (1) of this rule in relation to both elections.

(3) The votes shall be counted in the parish, or in some place near thereto, as soon as practicable after the close of the poll.

Equality of Votes.

19. If an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer or deputy returning officer who counts the votes may, if a parochial elector of the parish, give such additional vote in writing, but shall not otherwise be entitled to vote at the election. If in such a case the returning officer, or deputy returning officer, as the case may be, is not a parochial elector of the parish, or is unwilling to vote, he shall determine by lot which of the candidates whose votes are equal shall be elected.

Declaration of Result of Poll.

20.—(1) The declaration of the result of the poll shall be in the form No. 7 in the second schedule to this Order, or in a form to the like effect.

(2) The returning officer, or deputy returning officer, as the case may be, making the declaration shall forthwith cause a copy of it to be affixed on the front of the building in which the votes have been counted. If the declaration is made by a deputy returning officer, he shall forthwith send it to the returning officer.

Publication of Result of Election.

21.—(1) The returning officer shall prepare and sign a notice of the result of the election in the parish, or in all the wards of the parish, as the case may be, and shall by such notice declare to be elected or to be deemed to be re-elected the persons who, under rule 9, are to be declared to be elected or to be deemed to be re-elected without a poll being taken. Such persons shall be deemed to have been elected or re-elected on the day of election as defined by rule 32 (2) of this Order. The notice shall be in the form No. 8 in the second schedule to this Order, or in a form to the like effect.

(2) The returning officer shall cause a copy of the notice to be suspended in the board room, if any, of the vestry, and he shall also cause public notice thereof to be given. The returning officer shall also send copies of the notice to the persons elected or deemed to be re-elected.

Who to be deemed to fill Casual Vacancies (*c*).

22. In the event of one or more casual vacancies in the office of vestryman being filled up at the election, where there is a poll, the persons elected by the fewest votes shall be deemed elected to fill such vacancies. Should there be an equality of votes between such persons, the vestry shall determine by ballot which of such persons shall be deemed elected to fill the casual vacancy. If the persons elected to fill the casual vacancies will hold office for different periods, the person elected by the fewest votes, or if the votes are equal the person selected by the vestry by ballot from the persons so elected shall hold office for the shorter period. Where there is no poll the person or persons to be deemed to be elected to fill the casual vacancy or vacancies shall be determined by the vestry by ballot.

Application and Adaptation of Ballot Act, 1872.

23. The provisions of the Ballot Act, 1872, which, with adaptations and alterations, are set out in the third schedule to this Order, and only such provisions of that Act, shall, subject to such adaptations and alterations and to the provisions of this Order, apply to the elections of vestrymen and auditors in like manner as in the case of a municipal election.

Adaptation of Municipal Corporations Act, 1882 (*d*).

24.—(1) The provisions of sections 74 and 75 of the Municipal Corporations Act, 1882, which, with adaptations and alterations, are set out in the fourth schedule to this Order, shall, subject to such adaptations and alterations, apply to the elections of vestrymen and auditors; and such of the provisions of that Act as relate to the acceptance of office, re-eligibility of holders of office, and filling of casual vacancies, and are, with adaptations and alterations, set out in the fifth schedule to this Order, shall, subject to such adaptations and alterations, apply to the election of vestrymen and to the persons elected or deemed to be re-elected thereat.

(2) In the application of part iv. of the Municipal Corporations Act, 1882 (relating to Corrupt Practices and Election Petitions), as amended by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the following adaptations and alterations shall have effect:—

(a) Such application shall be subject to the provisions of this Order.

(b) References to the elections of vestrymen and auditors shall be deemed to be substituted for references to a municipal election or to an election to a corporate office. "Parish," and in section 93 (2) "Parish or if the parish forms part of a district under a district board of works, the district" shall be substituted for "borough," "poor rate" shall be substituted for

(*c*) **Casual vacancies.** See also sched. 5, *post*.

(*d*) **Municipal Corporations Act, 1882.** See this Act, *ante*, pp. 75—120. As to its application to the election of vestrymen and auditors, see the Loc. Govt. Act, 1894 sec. 48 (4), *ante*.

"borough fund or borough rate," "returning officer" shall be substituted for "town clerk," and "voter" shall mean "a parochial elector or a person who votes or claims to vote at an election of vestrymen or auditors."

(c) In the application of sub-section (2) of section 89 such sub-section shall be adapted and altered so as to read as follows:—

"(2) The security shall be to the amount of fifty pounds, unless in any case the High Court or a judge thereof, on summons, order that the same be to a lesser amount, or to a larger amount not exceeding three hundred pounds, and shall be given in the prescribed manner either by a deposit of money or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other."

Adaptation of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (e).

25. In the application of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, the following adaptations and alterations shall have effect:—

(1) Such application shall be subject to the provisions of this Order.

(2) The expressions "parish or ward of parish," "returning officer at election of vestrymen or auditors," and "poor rate" shall be deemed to be substituted in the Act for "borough or ward," "town clerk," and "borough fund or rate," respectively.

(3) The expression "corporate office" in the Act shall mean "the office of vestryman or auditor," and "a municipal election" shall mean "an election of one or more vestrymen or auditors;" and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(4) So much of section 13 of the Act as permits one polling agent to be employed in each polling station shall not apply, except so far as the employment of polling agents is permitted by rule 16 of this Order.

(5) An election petition complaining of the election on the ground of an illegal practice may be presented at any time within six weeks after the day of election.

(6) A petition relating to the election of a vestryman or auditor may, if the parish forms part of a district under a district board of works, be tried at any place within such district.

(7) In section 34 of the Act "burgess roll" shall mean "register of parochial electors."

(8) Section 37 of the Act shall be read as if a reference to an election of vestrymen or auditors was substituted for a reference to any of the elections mentioned in the first schedule to the Act.

Expenses.

26. Any sum which may be payable to the returning officer in respect of his services in the conduct of the election, or in respect of expenses incurred in relation to the election, shall be defrayed by order of the vestry out of the poor rate of the parish.

Wards.

27.—(1) If the parish is divided into wards for the election of vestrymen and auditors, the rules in this Order shall apply to each of such wards as if it were a parish.

(2) Provided that if the parish is so divided, an elector shall not be permitted to vote in more than one ward.

(3) Provided also, that any sum which, in pursuance of this rule and of rule 26, would be charged to any ward shall be charged to the parish.

Woolwich.

28.—(1) In the case of the parish of Woolwich the rules in this Order shall, subject as herein-after mentioned, apply with the substitution of a reference to the election of members of the Woolwich Local Board of Health for a reference to the election of vestrymen, of the local board and the clerk to the local board for the vestry and the vestry clerk, and of the general district rate for the poor rate of the parish, and the day for the poll shall be such day in the month of May, one thousand eight hundred and ninety-seven, as may be fixed by the local board.

(e) **Mun. Electns. Corr. and Ill. Prac. Act, 1884.** See this Act, *ante.*

(2) In the case of the parish of Woolwich the questions which under rule 17 the presiding officer may, and if required by any parochial elector or by any polling agent appointed under rule 16 shall, put to any elector shall be as follows :—

(a) Are you the person entered in the parochial register for this parish, as follows [*read the whole entry from the register*] ?

(b) Have you already voted at the present election of members of the Woolwich Local Board of Health ?

Publication of Notices.

29. Any public notice required by this Order shall be given by posting the same on or near the principal door of each church and chapel in the parish, and in some conspicuous place or places within the parish.

Mark instead of Signature.

30. In place of any signature required by this Order, it shall be sufficient for the signatory to affix his mark, if the same is witnessed by two parochial electors.

Misnomer.—Inaccurate Description.

31. No misnomer or inaccurate description of any person or place named in any notice or nomination paper under this Order shall hinder the full operation of such notice or paper with respect to that person or place, provided the description of that person or place is such as to be commonly understood.

Definitions.

32.—(1) The term "vestry clerk" means a vestry clerk appointed under the Vestries Act, 1850, or under the Metropolis Management Acts, 1855 to 1890, or any Act amending those Acts, or under any local Act.

(2) The term "day of election" means such day in the month of May, one thousand eight hundred and ninety-seven, as the vestry may appoint for the poll, if any, at the election (*f*).

And we do hereby further direct that this Order may be cited as the "Vestrymen and Auditors (London) Election Order, 1897."

FIRST SCHEDULE.

TIMES IN 1897 FOR THE PROCEEDINGS AT THE ORDINARY ELECTION OF VESTRYMEN AND AUDITORS.

Proceeding.	Time.
1. Notice of election	Not later than twenty-one clear days before the day of election.
2. Receipt of nomination papers	Not later than twelve o'clock at noon on the eighteenth day before the day of election.
3. Sending notice of decision as to validity of nomination papers.	Not later than the seventeenth day before the day of election.
4. Making out statement as to persons nominated.	Not later than the sixteenth day before the day of election.
5. Withdrawal of candidates	Not later than twelve o'clock at noon on the thirteenth day before the day of election.
6. Notice of poll	Five clear days at least before the day of election.

(*f*) **Day of election.** See the Metrop. Man. Act, 1855, sec. 7, *ante*, p. 125.

SECOND SCHEDULE.

FORM NO. 1.

Notice of Election.

PARISH OF
ELECTION OF VESTRYMEN AND AUDITORS
*[for the several wards in the above-named parish] in the year 1897.

NOTICE IS HEREBY GIVEN THAT—

1. The number of vestrymen and auditors respectively to be elected for the said parish [*or* wards, *as the case may be*] at the said election is as follows :—†

2. Each candidate for election as a vestryman or auditor must be nominated in writing in the form prescribed by the Vestrymen and Auditors (London) Election Order, 1897, or in a form to the like effect, and the nomination paper must be sent to me, so that it shall be received at
(which is my office for the purpose of the election) not later than twelve o'clock at noon on , the day of , 1897.

3. A parochial elector must not sign more nomination papers than there are vestrymen or auditors, as the case may be, to be elected for the parish [*or* ward *as the case may be*], and he must not sign a nomination paper for the parish [*or* for any ward], unless he is registered as a parochial elector in respect of a qualification therein. [Nor must he sign nomination papers for more than one ward in the parish for vestrymen or auditors, as the case may be].‡

4. A person nominated as auditor must signify in writing his consent to serve.

5. Copies of the forms of nomination paper may be obtained, free of charge, from me at the above-named office.

6. Not later than , the day of , 1897, I shall cause a copy of a statement containing the names, places of abode, and descriptions of the persons nominated for the office of vestryman and auditor respectively for the said parish [*or* wards], and also containing a notice of my decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not, to be affixed on the principal external gate or door of the offices of the vestry.§

7. Any candidate nominated for election may not later than twelve o'clock at noon on , the day of , 1897, withdraw his candidature by delivering or causing to be delivered at my office for the purposes of the election a notice in writing of such withdrawal signed by him.

8. If the number of candidates who are validly nominated for the parish [*or* any ward], and whose candidature is not withdrawn, exceeds that of the persons to be elected, a poll will be taken on , the day of May, 1897. Due notice of the poll will be given.

Dated this day of , 1897.

Returning Officer.

Office for the purpose of election.

* If the parish is not divided into wards, omit these words.

† If the district is divided into wards, insert the names of the wards, with the number of persons to be elected for each. A tabular form may be used if preferred.

‡ If the parish is not divided into wards, omit these words.

§ If there are no such offices, substitute some conspicuous place or places within the parish or wards.

FORM NO. 2.

Nomination Paper.

PARISH OF
ELECTION OF VESTRYMEN [*or* AUDITORS] for the above parish [*or* for the ward of the above parish] in the year 1897.

We, the undersigned, being respectively parochial electors of the said parish [*or* ward], do hereby nominate the under-mentioned person as a candidate for the office of vestryman [*or* auditor] at the said election.

Name of Candidate.		Place of Abode.	Description.	How qualified (specify qualification according to direction in Instruction 5).
Surname.	Other Names in full.			
1.	2.	3.	4.	5.

Signature of PROPOSER.

Place of Abode.

Signature of SECONDER.

Place of Abode.

* I do hereby assent to serve as auditor of accounts for the parish of

Signature of Candidate.

* If the nomination paper relates to the office of vestryman, omit this.

Instructions for filling up Nomination Paper.†

† These instructions form part of the nomination paper.

1. The surname of only one candidate for election must be inserted in column 1.
2. The other names of the candidate must be inserted in full in column 2.
3. Insert in column 3 the place of abode of the candidate.
4. In column 4 state the occupation, if any, of the candidate. If the candidate has no occupation, insert some such description as "gentleman," or "married woman," or "spinster," or "widow," as the case may be.
5. If the candidate is a parochial elector of the parish (that is, if his or her name is registered in the register of parochial electors of such parish) insert in column 5 "parochial elector." If the candidate is not a parochial elector of the parish, but he or she has, during the whole of the twelve months preceding the election, resided in the parish, insert in column 5 "residence." If the candidate has both these qualifications it will be sufficient to insert in column 5 one of his or her qualifications, but both may be inserted.
6.—(1) The paper must be signed by two parochial electors of the parish [*or* ward,] and no more; by one as proposer, and by the other as seconder. The places of abode of the proposer and seconder must also be inserted. Instead of signing the proposer or seconder may affix his mark, if it is witnessed by two parochial electors.

(2) A parochial elector must not sign more nomination papers than there are vestrymen [*or* auditors] to be elected for the parish [*or* ward], and he must not sign a nomination paper for the parish [*or* ward] unless he is registered as a parochial elector in respect of a qualification therein. Nor must he sign nomination papers for vestrymen [*or* auditors] in more than one ward in the parish.

7.‡ The candidate must sign the nomination paper in the place provided for the purpose to show that he assents to serve as auditor.

‡ If the nomination paper relates to the office of vestryman, omit this paragraph.

FORM NO. 3.

Statement as to Persons nominated.

PARISH OF

The following is a statement as to the persons nominated for election as vestrymen and auditors respectively for the above-named parish [*or* for the several wards in the above-named parish].

AS VESTRYMEN.

Parish [*or* Wards].	Persons nominated.			Decision of Returning Officer that Candidate has not been nominated by a valid Nomination Paper.
	Names (Surnames first).	Places of Abode.	Descriptions	
1.	2.	3.	4.	5.

The candidates opposite whose names no entry is made in column 5 have been validly nominated.

AS AUDITORS.

Parish [*or* Wards].	Persons nominated.			Decision of Returning Officer that Candidate has not been nominated by a valid Nomination Paper.
	Names (Surnames first).	Places of Abode.	Descriptions	
1.	2.	3.	4.	5.

The candidates opposite whose names no entry is made in column 5 have been validly nominated.

Dated this day of , 1897.

Returning Officer.

Office for the purpose of election.

FORM NO. 4.

Notice that no Poll will be taken.

PARISH OF

[ward of the above parish].

WHEREAS the following candidates have been duly nominated for election as vestrymen [*or* auditors, *or* vestrymen and auditors] for the said parish [*or* ward]: [*Insert names, places of abode, and descriptions of candidates.*]

And whereas the number of those

[*or*, And whereas [*insert name or names*] has [*or* have] since withdrawn his [*or* their] candidature [*or if some other event has occurred causing a person to cease to be a candidate state what it is*], and the number of the remaining] candidates is [equal to *or* less than] the number of persons, namely, to be elected as vestrymen [*or* auditors, *or* vestrymen and auditors] for the said parish [*or* ward],

I do hereby give notice that a poll will not be taken as to the election of vestrymen [*or* auditors, *or* vestrymen and auditors] for the said parish [*or* ward], and that the said [*insert names*]

will be declared elected as vestrymen [*or* auditors, *or* vestrymen and auditors] for the said parish [*or* ward]*, and also that [*insert names*]

retiring vestrymen for the said parish [*or* ward] will be declared to be deemed to be re-elected.

* Omit from * to the end of the sentence, except in cases where the number of candidates or remaining candidates for the office of vestryman is less than the number to be elected.

Dated this day of , 1897.

Returning Officer.

FORM NO. 5.

Notice of Poll.

[This form is for use where a poll is taken for the election of vestrymen only.]

PARISH OF

ELECTION OF VESTRYMEN

for the above parish [*or* for the ward of the above parish] in the year 1897.

NOTICE IS HEREBY GIVEN—

1. That a poll for the election of vestrymen for the above-named parish [*or* ward] will be held on , the day of May, 1897, between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon.

2. That the number of vestrymen to be elected for the parish [*or* ward] is .

3. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders are as follows :—

Names of Candidates (Surname first).†	Places of Abode.	Descriptions	Names of Proposer (Surname first).	Names of Seconder (Surname first).

† Insert particulars as to each candidate for the parish or ward whose nomination is valid, and who has not withdrawn his candidature.

4.‡—(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows :—

‡ If the parish or ward is not divided into polling districts for the purposes of the election, paragraph 4 should be omitted.

5.§ The situation and allotment of the polling places and the description of the persons entitled to vote thereat and at the several polling stations are as follows :—

§ If only one polling place or station, adapt form accordingly.

6. The poll will be taken by ballot.

Dated this day of , 1897.

Returning Officer.

Office for the purpose of election.

FORM No. 6.

Notice of Poll.

[This form may be used where polls are taken together for the election of vestrymen and auditors.]

ELECTION OF VESTRYMEN AND AUDITORS
for the PARISH OF [*or* for the ward
of the parish of] in the year 1897.

NOTICE IS HEREBY GIVEN—

1. That polls for the election of vestrymen and auditors for the above-named parish [*or* ward] will be held on the day of May, 1897, between the hours of eight o'clock in the forenoon and eight o'clock in the afternoon.
2. That the number of vestrymen to be elected for the parish [*or* ward] is .
3. That the number of auditors to be elected for the parish [*or* ward] is .
4. That the names in alphabetical order, places of abode, and descriptions of the candidates for election, and the names of their respective proposers and seconders are as follows :—

AS VESTRYMEN.

Names of Candidate (Surname first).	Places of Abode.	Descriptions.	Names of Proposer Surname first).	Names of Seconder (Surname first).

AS AUDITORS.

Names of Candidate (Surname first).	Places of Abode.	Descriptions.	Names of Proposer (Surname first).	Names of Seconder (Surname first).

5.* —(1) That each elector must vote in the polling district in which the property in respect of which he votes is situate, and if it is situate in more than one polling district he may vote in any one (but in one only) of such polling districts.

(2) The polling districts are as follows :—

6.† The situation and allotment of the polling places and the description of the persons entitled to vote thereat and at the several polling stations are as follows :—

7. The poll will be taken by ballot.

Dated this day of , 1897.

Returning Officer.

Office for the purpose of election.

* If the parish or ward is not divided into polling districts for the purposes of the election, paragraph 5 should be omitted.

† If only one polling place or station, adapt form accordingly.

FORM NO. 7.

Declaration of Result of Poll.

PARISH OF

ELECTION OF VESTRYMEN AND AUDITORS*
for the above parish [*or* for the ward of the above parish] in the year 1897.

* If the poll relates only to the election of vestrymen or of auditors, as the case may be, adapt form accordingly.

I, the undersigned, being the returning officer [*or* deputy returning officer duly authorised in that behalf] at the poll for the election of vestrymen and auditors for the said parish [*or* ward] held on the day of May, 1897, do hereby give notice that the number of votes recorded for each candidate at the election is as follows:—

AS VESTRYMEN.

Names of Candidates.		Places of Abode.	Number of Votes recorded.
Surnames.	Other Names.		

AS AUDITORS.

Names of Candidates.		Places of Abode.	Number of Votes recorded.
Surnames.	Other Names.		

And I do hereby declare that the said are duly elected vestrymen for the said parish [*or* ward] and that the said are duly elected auditors for the said parish [*or* ward].

Dated this day of , 1897.

Returning Officer
[*or* Deputy Returning Officer].

FORM NO. 8.

Notice of Result of Elections.

PARISH OF

ELECTION OF VESTRYMEN AND AUDITORS
for the above parish in the year 1897.

I, the undersigned, being the returning officer at the election of vestrymen and auditors for the parish, do hereby give notice that the candidates whose names are entered in column 6 of the first statement hereunder opposite to the numbers entered in column 5 have been declared duly elected vestrymen; and I hereby declare that the persons whose names are entered in the said column 6 or in column 7, and opposite to whose names no numbers are entered in column 5, where no polls have been taken, were duly elected, or are to be deemed to be re-elected, as vestrymen for the parish [*or* for the wards opposite to the names of which in column 1 the names of such persons are entered].

And I do hereby further give notice that the candidates at the election whose names are entered in column 6 of the second statement hereunder opposite to the numbers entered in column 5 have been declared duly elected auditors; and I hereby declare that the candidates whose names are entered in the said column 6, and opposite whose names no numbers are entered in column 5, where no polls have been taken, were duly elected as auditors for the parish [*or* for the wards opposite to the names of which in column 1 the names of such candidates are entered].

AS VESTRYMEN.

Parish and Wards.	Names of Candidates.		Places of Abode.	Number of Votes recorded.	Names of Candidates elected.	Names of retiring Vestrymen deemed to be re-elected.
	Surnames.	Other Names.				
1.	2.	3.	4.	5.	6.	7.

AS AUDITORS.

Parish and Wards.	Names of Candidates.		Places of Abode.	Number of Votes recorded.	Names of Candidates elected.
	Surnames.	Other Names.			
1.	2.	3.	4.	5.	6.

Dated this day of , 1897.

Returning Officer.

THIRD SCHEDULE.

PROVISIONS OF THE BALLOT ACT, 1872, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTIONS OF VESTRYMEN AND AUDITORS.

PROCEDURE AT ELECTIONS OF VESTRYMEN AND AUDITORS.

Poll at Elections.

2. The ballot of each voter at an election of vestrymen or auditors shall consist of a paper (in this Act called a ballot paper) showing the names and descriptions of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back.

If in the register of parochial electors for a parish, the same number is placed opposite to the name of more than one parochial elector, the returning officer shall put a distinguishing mark on each part of the register which contains numbers used in other parts of the register, and when the number of any voter on any part of the

register is entered on the counterfoil of a ballot paper, the mark on that part shall also be entered thereon.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given. The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

If polls are taken together as to the election of both vestrymen and auditors, the names and descriptions of the candidates for the office of vestryman and for the office of auditor shall be included in the same ballot paper.

OFFENCES.

Offences in respect of Ballot Papers and Ballot Boxes.

3. Every person who—

(1) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(2) Without due authority supplies any ballot paper to any person; or

(3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(4) Fraudulently takes out of the polling station any ballot paper; or

(5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the ballot boxes, ballot papers, and marking instruments at an election, the property in such boxes, papers, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of Secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of parochial electors of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, agent, and person in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he has marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace to imprisonment for any term not exceeding six months, with or without hard labour.

USE OF SCHOOL AND PUBLIC ROOM FOR POLL.

6. The returning officer at an election of vestrymen or auditors may use, free of charge, for the purpose of taking the poll or for counting the votes at such election any room in a school receiving a grant out of moneys provided by Parliament, and any room the expense of maintaining which is payable out of any local rate, but he shall make good any damage done to such room, and defray any expense incurred by the person or body of persons, corporate or unincorporate, having control over the same on account of its being used for the purpose of taking the poll or for counting the votes as aforesaid.

The use of any room in an unoccupied house for taking the poll shall not render any person liable to be rated or to pay any rate for such house.

DUTIES OF RETURNING AND ELECTION OFFICERS.

General Powers and Duties of Returning Officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, compartments, ballot boxes, ballot papers, stamping instruments, copies of register of parochial electors, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting the election.

Every deputy returning officer shall, in so far as he acts as returning officer, be deemed to be included in the term returning officer.

Keeping of Order in Station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Powers of Presiding Officer and Administration of Oaths, &c.

10. For the purpose of the adjournment of the poll, a presiding officer shall have the power by law belonging to a deputy returning officer in a parliamentary election; and any presiding officer and any clerk appointed by the returning officer to attend at a polling station shall have the power of asking the questions and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of Officers for Misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds (*g*).

No returning officer or officer appointed by him in connection with the election of vestrymen or auditors for any parish, nor any partner or clerk of any such officer, shall act as agent for any candidate in the management or conduct of his election as a vestryman or auditor. If any returning officer or officer appointed by him, or the partner or clerk of any such officer, shall so act, he shall be guilty of a misdemeanor.

(*g*) **Liability of returning officer.** Notwithstanding the penalty imposed by sec. 11, the Court has power to make an order for the payment of costs against a returning officer by whose negligence an election is avoided. *Wilson* v. *Ingham*, *infra*.

MISCELLANEOUS.

Prohibition of Disclosure of Vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election or return, be required to state for whom he has voted.

Non-compliance with Rules.

13. No election shall be declared invalid by reason of a defect in the title or appointment of the returning officer or deputy returning officer, or of a non-compliance with the rules contained in the first schedule to this Act or in the Vestrymen and Auditors (London) Election Order, 1897, or any mistake in the use of the forms in the second schedule to this Act or in the said Order, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act and of the Local Government Act, 1894, and that such non-compliance or mistake did not affect the result of the election (*h*).

PERSONATION.

Definition and Punishment of Personation.

24. The following enactments shall be made with respect to personation at an election of vestrymen or auditors:

It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time, shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

Sections 86 to 89, both inclusive, of the Parliamentary Voters Registration Act, 1843, shall apply to personation at an election of vestrymen or auditors in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Act, but with the substitution of the words "any parochial elector or any agent appointed under the Vestrymen and Auditors (London) Election Order, 1897," for "any such agent so appointed as aforesaid" or for any reference to any such agent, and of "the presiding officer" for "the returning officer or his respective deputy."

EFFECT OF SCHEDULES.

28. The schedules to this Act, and the notes thereto, and directions therein shall be construed and have effect as part of this Act.

SCHEDULES TO ACT.

FIRST SCHEDULE TO ACT.

RULES FOR ELECTIONS OF VESTRYMEN AND AUDITORS.

The Poll.

15. At every polling place the returning officer shall, subject to the provisions of the Vestrymen and Auditors (London) Election Order, 1897, provide a sufficient number of polling stations for the accommodation of the electors entitled to vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

(*h*) **Mistake in use of form.** Where the name of a candidate who had duly withdrawn was inadvertently printed on the ballot paper, the election of those candidates who were elected by a majority of votes less than the number given to the candidate who had withdrawn was declared void, the Court thinking that the mistake might have affected the election. *Wilson* v. *Ingham*, 64 L. J. Q. B. 774; 59 J. P. 614. Compare the corresponding provision in sec. 72 of the Mun. Corp. Act, 1882, *ante*, p. 101, and see note thereto.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret.

21. The presiding officer appointed to preside at each station shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the second schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector, it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector, together with the distinguishing mark, if any, of the part of the register in which the number occurs shall, as required by section 2 of this Act as adapted, be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed by this Act, or of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list, in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions permitted by the Vestrymen and Auditors (London) Election Order, 1897, to be asked of voters at the time of polling, and upon taking an oath in the form hereinafter set out, which the presiding officer shall administer, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called "a tendered ballot paper") shall be of a colour differing from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called "the tendered votes list."

The oath shall be administered in the following form:—

"You do swear that you are the same person whose name appears as *A.B.* on the register of parochial electors for the parish of [*or* ward of the parish of], and that you have not already voted at the present election of vestrymen [*or* auditors *or* vestrymen and auditors] in this [or any other ward in the] parish.

"SO HELP YOU GOD."

Provided that any person entitled to affirm in lieu of taking an oath may affirm in the following form :—

"I, *A.B.*, do solemnly, sincerely, and truly declare and affirm that I am the same person whose name appears as *A.B.* on the register of parochial electors for the parish of [*or* ward of the parish of .], and that I have not already voted at the present election of vestrymen [*or* auditors *or* vestrymen and auditors] in this [or any other ward in the] parish."

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his seal,—

(1) Each ballot box in use at his station, unopened but with the key attached ; and

(2) The unused and spoilt ballot papers, placed together ; and

(3) The tendered ballot papers ; and

(4) The marked copies of the register of parochial electors, and the counterfoils of the ballot papers ; and

(5) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read ;

and shall deliver such packets to the returning officer, or deputy returning officer, by whom the votes are to be counted, unless he is himself such officer.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The provisions of rule 16 of the Vestrymen and Auditors (London) Election Order, 1897, as to the appointment of polling agents, shall apply to agents to attend the counting of the votes, except that the number of such agents may be twice as many as the number of polling agents in the said rule mentioned.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, the agents of the candidates, and any person to whom rule 51 of this schedule applies, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall in the presence of the agents of the candidates open each ballot box, and taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes.

The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding, if and so far as he thinks it necessary, the hours between the close of the poll and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall draw up a statement showing the number of ballot papers rejected and not counted by him under the several heads of—

1. Want of official mark ;
2. Voting for more candidates than entitled to ;
3. Writing or mark by which voter could be identified ;
4. Unmarked or void for uncertainty ;

and shall on request allow any agents of the candidates to copy such statement. If the votes are counted by a deputy returning officer he shall, with the declaration of the result of the poll, report to the returning officer the number of ballot papers rejected and not counted by him, under the above heads, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall draw up a statement as to the result of such verification, and shall, on request, allow any agents of the candidates to copy it.

If the votes are counted by a deputy returning officer, he shall report to the returning officer the result of the verification, and no such statement as aforesaid shall be drawn up by the returning officer. The deputy returning officer shall, on request, allow any agents of the candidates, before such report is sent in, to copy it. He shall with his report send to the returning officer the sealed packets of counted and rejected ballot papers, and the unopened sealed packets which he has received from any presiding officer.

38. Lastly, the returning officer shall carefully preserve for the period hereinafter mentioned all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the parish for which such election was held.

39. The returning officer shall retain for six months all documents relating to an election of vestrymen or auditors, and then, unless otherwise directed by an order of the county court having jurisdiction in the parish or in any part thereof, or of any tribunal in which the election is questioned, shall cause them to be destroyed.

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the returning officer, except under the order of the county court or tribunal aforesaid, to be granted by such court or tribunal on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return ; and any such order for the inspection or production of ballot papers may be made subject to such condition as to persons, time, place, and mode of inspection or production as the court or tribunal making the same may think expedient, and shall be obeyed by the returning officer.

41. No person shall, except by order of the county court having jurisdiction in the parish or any part thereof, or of any tribunal having cognizance of any question relating to the election, open the sealed packet of counterfoils after the same has been once sealed up, or be allowed to inspect any counted ballot papers in the custody of the returning officer. Such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the court or tribunal making the order may think expedient : provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents in the custody of a returning officer, in pursuance of this Act, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may have been or may hereafter be prescribed by the London County Council, and the returning officer shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may have been or may hereafter be prescribed by the county council.

43. Where an order is made for the production by the returning officer of any document in his possession relating to any specified election of vestrymen or auditors, the production by such officer or his agent of the document ordered, in such manner as may be directed by such order, or by an order of the court having power to make such first-mentioned order, shall be conclusive evidence that such document relates to

the specified election ; and any endorsement appearing on any packet of ballot papers produced by such returning officer or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be primâ facie evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

43*a*. There shall be an appeal from any order of the county court under these rules in like manner as in other cases in such court.

General Provisions.

47. If the returning officer presides at any polling station, the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. The returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or rejection from the polling station of any person.

51. If a candidate or candidates shall have appointed an agent under rule 31 of this schedule, such candidate, or, as the case may be, one of such candidates, may take the place of the agent so appointed. If a candidate has not appointed or joined in appointing such an agent, and the number of such agents is less than the number allowed by that rule, the candidate may act as his own agent ; but if the number of candidates applying to act under this rule would bring up the number of persons (including candidates) acting as agents to a number exceeding that allowed by rule 31, the returning officer may decide which of the candidates shall be allowed to act as agent : provided that any person acting under this rule may, at any time before so acting, make the statutory declaration required by rule 54 of this schedule, but he shall not so act until he has made such declaration.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll ; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent for the purposes of attending a polling station or at the counting of the votes dies or becomes incapable of acting during the time of the election, another agent may be appointed in his place, and notice shall forthwith be given to the returning officer in writing of the name and address of any agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, and also every officer, clerk, or agent authorised to attend at the counting of the votes, shall, before the opening of the poll, make a statutory declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer ; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

SECOND SCHEDULE TO ACT.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law.

Form of Ballot Paper.

Form of Front of Ballot Paper.

ELECTION OF VESTRYMEN.

Counterfoil No.		
1	BLAKE (Thomas Blake, of 59, St. George's Place, Surgeon.)	
2	GIBSON (Henry Gibson, of 10, High Street, Oilman.)	
3	JOHNSON (Charles Johnson, of 7, Hanover Square, Gentleman.)	
4	ROBINSON (Jane Ellen Robinson, of 12, Green Street, married woman.)	
5	THOMPSON (William Henry Thompson, of 14, Queen Street, Silversmith.)	
6	WATSON (Robert Watson, of 22, Albion Street, Chemist.)	

ELECTION OF AUDITORS.

1	BROWN (John Brown, of 10, Albert Place, Accountant.)	
2	FRY (Thomas Fry, of 16, Sydney Street, Architect.)	
3	MORGAN (William Morgan, of 34, New Street, Brewer.)	
4	PHILLIPS (George Phillips, of 10, King's Gardens, Gentleman.)	
5	RICHARDS (Albert Richards, of 12, Dulverton Terrace, Solicitor.)	
6	SMITH (Henry Smith, of 114, High Street, Grocer.)	

NOTE:—
The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.

Form of Back of Ballot Paper.

No.

Election of vestrymen [*or* auditors, *or* vestrymen and auditors] for parish [*or* ward of parish] in the year 1897.

Note.—The number on the ballot paper is to correspond with that on the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, and the names, places of abode, and descriptions, and the number on the back of the paper, shall be printed in small characters.

If the poll is taken only as to the election of vestrymen, or only as to the election of auditors, omit the part of the ballot paper relating to the election of auditors or of vestrymen, as the case may be, but in all cases retain the words printed on the counterfoil.

Form of Directions for the guidance of the Voter in voting, which shall be printed in conspicuous Characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

* If the poll is taken for the election of auditors, or of both vestrymen and auditors, these directions must be adapted accordingly.

The voter may vote for candidates as vestrymen.*

The voter will go into one of the compartments, and with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X.

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidates as vestrymen,* or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare that I will not at this election of vestrymen [*or* auditors, *or* vestrymen and auditors] for the parish of [*or* ward of the parish of], do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration. One declaration may be made by the returning officer in respect of all the wards for which he is returning officer.

Form of Declaration of inability to read.

I, *A.B.*, of , being numbered on the register of parochial electors for the parish of , do hereby declare that I am unable to read.

A.B., his mark.

day of May, 1897.

I, the undersigned, being the presiding officer for the polling station for the parish of [*or* ward of the parish of], do hereby certify that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed, *C.D.*,
Presiding officer for polling station for the parish of [*or* ward of the parish of].

day of May, 1897.

FOURTH SCHEDULE.

SECTIONS 74 AND 75 OF THE MUNICIPAL CORPORATIONS ACT, 1882, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF VESTRYMEN AND AUDITORS.

Offences in relation to Nomination Papers.

74.—(1) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any forged nomination paper,

knowing it to be forged, he shall be guilty of a misdemeanor, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2) An attempt to commit any such offence shall be punishable as the offence is punishable.

Neglect of Duty by Returning Officer or Deputy Returning Officer.

75.—(1) If a person who has undertaken to act as returning officer, or deputy returning officer, at an election of vestrymen or auditors neglects or refuses to conduct or declare the election in manner provided by the Local Government Act, 1894, and the Vestrymen and Auditors (London) Election Order, 1897, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2) An action under this section shall not lie after three months from the neglect or refusal.

FIFTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, WITH RESPECT TO THE ACCEPTANCE OF OFFICE, RESIGNATION, RE-ELIGIBILITY OF HOLDERS OF OFFICE, AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION TO THE ELECTION OF VESTRYMEN AND TO THE PERSONS ELECTED THEREAT (*i*).

Obligation to accept Office or pay Fine (k).

34.—(1) Every qualified person elected or deemed to be re-elected to the office of vestryman, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of being elected or deemed to be re-elected, or shall, in lieu thereof, be liable to pay to the vestry a fine of such amount, not exceeding fifty pounds, as the vestry by regulations determine.

(2) If there are no regulations determining fines, the fine shall be twenty pounds.

(3) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and any person who having already served the office of vestryman for the parish or ward claims exemption within ten days after notice of being declared to be deemed to be re-elected.

(4) A fine payable under this section shall be recoverable summarily.

(5) If a person is either elected or deemed to be re-elected as vestryman in more than one ward in the parish for which the election is held, he shall not accept office in respect of more than one of such wards, and if he accepts office or pays the fine for non-acceptance of office in respect of one ward he shall not be liable to a fine for non-acceptance of office in respect of any other of such wards.

(6) Any person who has been nominated and elected without his consent to his nomination being previously obtained shall not be liable to a fine under this section.

Declaration on Acceptance of Office (k).

35. A person elected or deemed to be re-elected to the office of vestryman shall not, until he has made and subscribed before two vestrymen of the parish, or the clerk to the vestry, or, if he is absent from the United Kingdom, before a British Consul, a declaration in the following form or in a form to the like effect, act in the office except in administering that declaration :—

FORM OF DECLARATION ON ACCEPTANCE OF OFFICE.

I, *A.B.*, having been elected [*or* being deemed to be re-elected] vestryman for the parish of [*or* ward of the parish of], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this day of , 1897.

This declaration was made and subscribed before us*

Vestrymen of the above-named parish.

* If the declaration is made and subscribed before the clerk or a consul, adapt form accordingly.

(*i*) **Application of Mun. Corp. Act, 1882.** See r. 24, *ante*.

(*k*) **Acceptance of office.** See notes to secs. 34 and 35 of the Mun. Corp. Act, 1882, *ante*, pp. 89 and 90.

Power to receive Declaration (*l*).

239.—(1) Members of the vestry or the clerk of a British Consul shall have authority to receive the declaration required to be made by a vestryman without any commission or authority other than this Act.

Penalty on acting in Office without making Declaration (*m*).

41.—(1) If any person acts in the office of vestryman without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action.

(2) The declaration, if made before a British Consul, shall be forthwith sent to the clerk to the vestry.

Resignation of Office (*n*).

36.—(1) A person elected as vestryman may at any time, by writing signed by him and delivered to the clerk to the vestry, resign the office, on payment of the fine provided for non-acceptance thereof.

(2) In any such case the vestry shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the vestry, and countersigned by the clerk, and fixed on the principal external gate or door of the offices of the vestry, and the office shall thereupon become vacant.

Re-eligibility of Office-Holders (*n*).

37. A person ceasing to hold the office of vestryman shall, unless disqualified to hold the office, be re-eligible.

Filling of Casual Vacancies (*o*).

40.—(1) On a casual vacancy in the office of vestryman, an election shall be held in accordance with rules framed under the Local Government Act, 1894; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2) In case of more than one casual vacancy in the office of vestryman being filled at the same election, the vestryman elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the vestryman elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the vestry.

(3) Non-acceptance of office by a person elected or deemed to be re-elected creates a casual vacancy.

Time for filling Casual Vacancies (*o*).

66.—(1) On a casual vacancy in the office of vestryman, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the vestry or to the clerk by two vestrymen.

(3) The day of election shall be fixed by the clerk to the vestry.

(4) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.

Given under the seal of office of the Local Government Board, this twenty-fourth day of March, in the year one thousand eight hundred and ninety-seven.

L.S.

HENRY CHAPLIN, *President.*

HUGH OWEN, *Secretary.*

(*l*) **Power to receive declaration.** See the Mun. Corp. Act, 1882, sec. 239, *ante*, p. 112.

(*m*) **Acting in office without making declaration.** See the Mun. Corp. Act, 1882, sec. 41 (1), *ante*, p. 92.

(*n*) **Resignation of office; re-eligibility of office holders.** See the Mun. Corp. Act, secs. 36 and 37, *ante*, p. 90.

(*o*) **Casual vacancies.** See r. 22, *ante*, and the Mun. Corp. Act, 1882, sec. 40, *ante*, p. 92, and sec. 66, *ante*, p. 99.

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